

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2005 JUL 18 PM 4:42

JEANNE HICKS, CLERK

BY: C. SUTTON

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5 Attorneys for Plaintiffs

6 IN THE SUPERIOR COURT OF ARIZONA

7 COUNTY OF YAVAPAI

8
9 **JOHN B. CUNDIFF** and **BARBARA C.**)
10 **CUNDIFF**, husband and wife; **BECKY NASH**,)
a married woman dealing with her separate)
11 property; **KENNETH PAGE** and **KATHRYN**)
PAGE, as Trustee of the Kenneth Page and)
Kathryn Page Trust,)

12 Plaintiffs,)

13 vs.)

14 **DONALD COX** and **CATHERINE COX**,)
husband and wife,)

15 Defendants.)
16

Case No. CV 2003-0399

Division 1

**PLAINTIFFS' CONTROVERTING
STATEMENT OF FACTS
IN SUPPORT OF PLAINTIFFS'
RESPONSE TO MOTION FOR
SUMMARY JUDGMENT
RE: AGRICULTURAL ACTIVITIES**

17
18 Plaintiffs, John and Barbara Cundiff, Becky Nash, and, Kenneth and Kathryn Page, by and
19 through undersigned counsel, pursuant to Rule 56(c)(2), Ariz.R.Civ.Proc., hereby file their
20 controverting statement of facts ("CSOF") in support of their response to Defendants' motion for
21 summary judgment re: agricultural activities.

22 RESPECTFULLY SUBMITTED this 18th day of July, 2005.

23 FAVOUR MOORE & WILHELMSSEN, P.A.

24
25 By: 
26 David K. Wilhelmsen
Marguerite Kirk

1 1. Plaintiffs agree that the June 13, 1974 recorded Declaration of Restrictions for Coyote
2 Springs Ranch provide:

3 1. Each and every parcel of the above-described premises shall be known and
4 described as residential parcels; that is to say, mobile, modular or permanent dwellings
5 may be erected and maintained upon said premises, subject to limitations with respect
6 thereto and hereinbelow set forth.

7 2. No trade, business, profession or any other type of commercial or industrial activity
8 shall be [initiated] or maintained within said property or any portion thereof.

9 *Coyote Springs Ranch recorded Declaration of Restrictions, June 13, 1974 at ¶¶1 and 2, p.1 (a true
10 and correct copy attached hereto and by this reference incorporated herein as Exhibit 1).*

11 2. Defendants have admitted that Declaration of Restrictions recorded June 13, 1974 applies
12 to their real property located at 7325 N. Coyote Springs Road. *Deposition of Catherine Cox at p.95,
13 line 17 through p.96, line 6, referring to deposition Exhibit 3 (a true and correct copy of deposition
14 transcript attached hereto and by this reference incorporated hereto as Exhibit 2); Defendants admit
15 that their land is subject to the recorded Declaration of Restrictions, dated June 13, 1974 at
16 Defendants' response to Plaintiffs' Request for Court's On-Site Inspection of Subject Real Property,
17 August 11, 2004 at Exhibit 1 (map indicating Defendants' real property with green "x").*

18 3. Defendant Catherine Cox testified during her deposition that the recorded covenants do not
19 apply to them because the covenants have been abandoned. *Exhibit 2, Deposition of Catherine Cox
20 at p. 103, line 23 through p.104, line 6.*

21 4. Defendant Catherine Cox testified that she, her husband and their two sons are in
22 partnership as "Prescott Valley Growers," and the partnership includes the Coyote Springs Ranch
23 property, the retail and wholesale outlets as partnership assets. *Exhibit 2, Deposition of Catherine Cox,
24 at p.16, lines 10-22. The partnership is engaged in the nursery business. See, U.S. federal income tax
25 return, 2004, p.1 (redacted, a copy attached hereto as Exhibit 3).*

26 Defendant Cox testified that at the time of her deposition, the partnership employed three (3)
employees at their Coyote Springs Ranch property. *Exhibit 2, Deposition of Catherine Cox at p. 14,
line 23 through p.15, line 3.*

1 Defendants Cox use their land at Coyote Springs Ranch to grow excess inventory, that is, trees.
2 *Exhibit 2, Deposition of Catherine Cox at p.15, line 22 through p.16, line 1; and, p.17 at line 23*
3 *through p.18 at line 17; and, p.26 at lines 29-24; and, p.28 at lines 11-16; and, at p.80, lines 20-23.*

4 5. Defendants admit that the growth of trees and shrubs on their subject property is for profit.
5 *Exhibit 2, Deposition of Catherine Cox at p.38, lines 11-12, and, at p.80, lines 20-23.*

6 6. Defendant Catherine Cox testified that she and her husband, prior to purchase of the Coyote
7 Springs Ranch property, were looking for vacant land because, in part, they "felt a need for more
8 property for Prescott Valley Growers." *Exhibit 2, Deposition of Catherine Cox at p.30, lines 6-16.*
9 Defendant Catherine Cox further testified that the property was to be used in conjunction with their
10 nursery business. *Exhibit 2, Deposition of Catherine Cox at p.31, lines 2-9.*

11 7. Defendants income tax returns set forth business assets depreciated under section 179 as
12 used exclusively for use in their nursery business. *See, 2004 Asset Detail Report, attached to*
13 *Defendants' partnership federal income tax return, 2004 (a copy attached hereto as Exhibit 4).*
14 Several items listed as depreciated business assets match the improvements made by Defendants to
15 the subject property. *See, Defendants' handwritten list of improvements to subject property,*
16 *Defendants' Initial Rule 26.1 Disclosure Statement (a copy attached hereto as Exhibit 5); and, see,*
17 *Exhibit 2, Deposition of Catherine Cox at pp.63-70 listing improvements made to the Coyote Springs*
18 *Ranch property, and bill for bobcat disclosed by Defendants as improvement to subject property, used*
19 *exclusively for business purposes (a copy attached hereto as Exhibit 6).*

20 8. Yavapai County Agricultural Guidelines for agricultural-use exemption provides, in
21 pertinent part, that to obtain an agricultural-use exemption, one criteria is that there must be "a
22 reasonable expectation of operating profit" generated by use of the land. *See, Yavapai County*
23 *Agricultural Guidelines, at p.2, ¶B (a copy attached hereto as Exhibit 7).*


24 ///

25 ///

26 ///

1 DATED this 18th day of July, 2005.

2 FAVOUR MOORE & WILHELMSSEN, P.A.

3
4 By: 
5 David K. Wilhelmsen
6 Marguerite Kirk
Post Office Box 1391
Prescott, Arizona 86302-1391
Attorneys for Plaintiffs

7 Original of the foregoing
8 filed this 18th day of July,
2005, with:


9 Clerk, Superior Court of Arizona
10 Yavapai County
120 S. Cortez St.
Prescott, Arizona 86302

11 A copy hand-delivered this
12 18th day of July, 2005, to:

13 Honorable David L. Mackey
14 Division One
Superior Court of Arizona
15 Yavapai County
120 S. Cortez St.
Prescott, Arizona 86302

16 and, a copy hand-delivered this
17 18th day of July, 2005, to:

18 Mark Drutz
19 Jeffrey Adams
MUSGROVE, DRUTZ & KACK, P.C.
1135 Iron Springs Road
20 Prescott, Arizona 86302
Attorneys for Defendants Cox

21
22 By: 
23 David K. Wilhelmsen
Marguerite Kirk

24
25
26

Robert D. Conlin

2233 North 7th Street

in piece

STATE OF ARIZONA, County of Yavapai

17 161

I do hereby certify that the within instrument was filed and recorded at the request of

June 13

A.D. 1976 at

1.35

at

Tom Lynch

P. M. Book 916. Official Records

Page 680-681-682

Records of Yavapai County, Arizona

WITNESS my hand and official seal the day and year first above written.

PAUL C. JENNEY, County Recorder

by Mary E. Hampton

Deputy

CUYUTE SPRINGS RANCH

DECLARATION OF RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS:

That Robert D. Conlin and Margaret Dell Conlin, his wife, and David A. Conlin, Jr., husband of Anne Conlin, dealing with his sole and separate property, being the owners of all the following described premises, situated in the County of Yavapai, State of Arizona, to-wit:

GOVERNMENT LOTS One (1) and Two (1) and the South half of the Northeast quarter and the Southeast quarter of Section One (1); all of Section Twelve (12); the East half and the East half of the East half of the Southwest quarter and the East half of the East half of the Northwest quarter and the Northwest quarter of the Northeast quarter of the Northwest quarter of Section Thirteen (13); the East half of Section Twenty-four (24); the East half of Section Twenty-five (25), all in Township Fifteen (15) North, Range One (1) West of the Gila and Salt River Base and Meridian; and

All of Section Six (6); all of Section Seven (7), GOVERNMENT LOTS One (1), Two (2), Three (3), and Four (4), and the Southeast quarter of the Southwest quarter and the South half of the Northeast quarter of the Southwest quarter of Section Nineteen (19), all in Township Fifteen (15) North, Range One (1) East of the Gila and Salt River Base and Meridian.

and desiring to establish the nature of the use and enjoyment of the premises hereinabove described, sometimes hereinafter referred to as property or premises, does hereby declare said premises subject to the following express covenants and stipulations as to the use and enjoyment thereof, all of which are to be construed as restrictive covenants running with the title to said premises and each and every part and parcel thereof and with each and every conveyance thereof hereafter made to-wit:

1. Each and every parcel of the above-described premises shall be known and described as residential parcels; that is to say, mobile, modular or permanent dwellings may be erected and maintained upon said premises, subject to limitations with respect thereto as hereinbelow set forth.

2. No trade, business, profession or any other type of commercial or industrial activity shall be initiated or maintained within said property or any portion thereof.

3. Said property or any portions thereof shall not be conveyed or subdivided into lots, parcels or tracts containing less than nine (9) gross acres, nor shall improvements be erected or maintained in or upon any lot, parcel or tract containing less than such nine (9) gross acres.

4. No structure or improvement of any kind or nature whatsoever shall be erected, permitted or maintained upon, over or across the easements or reservations for utilities or drainage, if any.

5. Residence buildings must be completed within twelve (12) months from commencement of construction. No garage, carport or other building shall be commenced or erected upon any portion of said property until the main dwelling building complying with this Declaration is under construction or has been moved onto the premises. Commencement of construction, for the purposes of this Declaration, shall be deemed to be the date material, raw or otherwise, shall have been placed or stored upon the premises.

6. All residential buildings to be erected, constructed, maintained or moved upon the premises or any portion thereof, as the case may be, shall be of new construction.

7. (a) All single family residences other than mobile homes shall require 1,000 square feet of ground floor area including storage but exclusive of any portion thereof used for open porches, pergolas, patios, carports or garages, whether or not they are attached to, or adjacent to said residence.

(b) Mobile homes shall (1) contain not less than 720 square feet of ground floor area devoted to living purposes; (2) be not less than 12 feet in width; (3) be placed so that the floor thereof is not more than 8 inches above the ground level;

(c) Travel Trailers or campers may occupy homesites during vacation periods, not to exceed three (3) weeks in any one season, or during the period of residence construction.

(d) No prefabricated or pre-erected dwelling having less than the above applicable square foot requirements, exclusive of open porches, pergolas or attached garage, if any, shall be erected, permitted or maintained on any portion of said property.

(e) No structure whatever other than one single family dwelling or mobile home, as herein provided, together with a private garage for not more than three (3) cars, a guest house, service quarters and necessary out buildings shall be erected, placed or permitted to remain on any portion of said property.

8. No 'Real Estate' or 'For Sale' sign or signs exceeding 24" by 24" may be erected or maintained on said premises. No general advertising signs, billboards, unsightly objects or public or private nuisances shall be erected, placed or permitted to remain on any portion of said premises.

9. No abandoned auto or auto parts or used machinery or other salvage or junk shall be placed or permitted to remain on any portion of said premises.

10. No swine shall be raised, bred or kept upon said premises. Said premises shall not be used in any way or for any purpose that may emit foul or noxious odors.

11. No mobile home shall be used or permitted to remain upon any lot unless such mobile home shall have two hundred (200) square feet of permanent roof, exclusive of mobile home roofing, and two hundred (200) square feet of concrete flooring, including cabanas, porches, storage, carports and garages, but exclusive of any portion thereof used as flooring or base for said mobile home.

12. All structures on said lots shall be of new construction, not exceeding 35 feet in height, and no buildings shall be moved from any other location onto any of said lots with the exception of prefabricated or pre-erected dwellings where the use thereof is permitted.

13. No temporary building may be moved onto or constructed on said premises, with the exception of temporary shop or office structures erected by contractors, or buildings during the actual bonafide construction or a permitted structure upon the premises, provided the contractor or builder agrees to remove such temporary shop or office structure within five (5) days after the actual final completion date of his construction activities of the premises.

14. No construction shed, basement, garage, tent, shack or other temporary structure shall at any time be used as a residence either temporarily or permanently.

15. No residence or dwelling shall be occupied or used prior to installations therein of water flush toilets and sanitary conveniences or facilities and shall be maintained in a sanitary manner and in conformity with all applicable local, county or state laws, as the case may be. No outside toilet or other sanitary conveniences or facilities shall be erected or maintained upon said premises.

16. All garbage or trash containers, oil tanks, bottled gas tanks and other such facilities must be underground or placed in an enclosed area so as to not be visible from the adjoining properties.

17. The foregoing restrictions and covenants run with the land and shall be binding upon all parties and all persons claiming through them until June 1, 1996, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, or so long thereafter as may be now or hereafter permitted by law.

18. Invalidity of any of the restrictions, covenants or conditions above by judgment or court order shall in no way affect the validity of the remaining provisions.

19. If there shall be a violation or threatened or attempted violation of any of said covenants, conditions, stipulations or restrictions, it shall be lawful for any person or persons owning said premises or any portion thereof to prosecute proceedings at law or in equity against all persons violating or attempting to, or threatening to violate any such covenants, restrictions, conditions or stipulations, and either prevent them or him from so doing or to recover damages or other dues for such violations. No failure of any other person or party to enforce any of the restrictions, rights, reservations, limitations, covenants and conditions contained herein shall, in any event, be construed or held to be a waiver thereof or consent to any further or succeeding breach or violation thereof. The violation of these restrictive covenants, conditions or stipulations or any one or more of them shall not affect the lien of any mortgage now of record, or which hereafter may be placed of record, upon said premises or any part thereof.

IN WITNESS WHEREOF, the above named parties have executed the within Declaration of Restrictions this 12th day of June, A.D., 1974.


Robert D. Conlin


Margaret Dell Conlin


David A. Conlin, Jr.

On this, the 12th day of June, 1974, personally appeared Robert D. Conlin and Margaret Dell Conlin, his wife.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My commission expires: 3/1/77


Notary Public

STATE OF ARIZONA)
County of Maricopa) ss.

On this, the 12th day of June, 1974, personally appeared David A. Conlin, Jr.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My commission expires: 3/1/77


Notary Public

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

DEPOSITION OF:

CATHERINE COX

JOHN B CUNDIFF and BARBARA C.)
CUNDIFF, husband and wife;)
ELIZABETH NASH, a married woman)
dealing with her separate)
property; KENNETH PAGE and)
KATHRYN PAGE, as Trustee of the)
Kenneth Page and Kathryn Page)
Trust,)

Plaintiffs,)

vs.)

Case No. CV 2003-0399

DONALD COX and CATHERINE COX)
husband and wife,)

Defendants,)

PURSUANT TO NOTICE, the deposition of CATHERINE COX, called for examination by Counsel for the Plaintiffs, was taken at the offices of FAVOUR, MOORE & WILHELMSSEN, 1580 Plaza West Drive, Prescott, Arizona, beginning at the approximate hour of 9:58 a.m., on Tuesday, June 22, 2004, before Ashlee Mangum, Certified Court Reporter #50612, a Registered Professional Reporter, within and for the State of Arizona.

LOTT REPORTING, INC.

316 North Alarcon Street

APPEARANCES

For the Plaintiffs: **MARGUERITE KIRK**
FAVOUR, MOORE & WILHELMSSEN, P.A.
1580 Plaza West Drive
Prescott, Arizona 86303
(928) 445-2444

For the Defendants: **JEFF ADAMS**
MUSGROVE, DRUTZ & KACK, P.C.
1135 Iron Springs Road
Prescott, Arizona 86302
(928) 445-5935

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1 Prescott, Arizona

June 22, 2004

2 ***

3 CATHERINE COX,

4 the deponent herein, having been first duly sworn, was
5 examined and testified as follows:

6 EXAMINATION

7 BY MS. KIRK:

8 Q. Would you please state your name and address for
9 the record.

10 A. My name is Catherine Helen Cox. My address is
11 7325 North Coyote Springs Road.

12 Q. And you reside there at that address?

13 A. I reside there part of the time.

14 Q. Okay. What is part of the time, ma'am? What do
15 you mean by that?

16 A. Probably three or four days every week and then
17 full-time in the summer, but then we have a home in
18 Scottsdale that I live in during the winter.

19 Q. Okay. Have you ever been deposed before?

20 A. No, I haven't.

21 Q. Okay. I just want to take this opportunity to go
22 over a couple ground rules with you concerning your
23 deposition today.

24 As you can tell, this is a written record;
25 therefore, it is important that we not talk over one

1 another. I'll try to allow you an opportunity to
2 complete your answers and if you could allow me an
3 opportunity to complete my question before beginning
4 your answer.

5 Also, because it is a written record, the court
6 reporter cannot take down nods of the heads or shakes of
7 the head. Hu-huh's and uh-huh's do not come out clearly
8 in the record; therefore, I request that you answer my
9 questions verbally. This is not a marathon session. If
10 from time to time you need a break to use the restroom
11 or whatever, just let me know and we'll try to arrange a
12 break as soon, thereafter, as possible.

13 Okay. Is there any physical or medical condition
14 that would preclude you from testifying truthfully
15 today?

16 A. No.

17 Q. Okay. How long have you lived in Scottsdale?

18 A. At that particular address, we've lived there for
19 twenty-four years.

20 Q. Okay. What is that address?

21 A. 12423 East Double Tree Ranch Road, Scottsdale,
22 Arizona.

23 Q. And prior to your purchase of the property that
24 you live in part-time in Prescott Valley, did you live
25 part-time in this area, Yavapai County?

1 A. Yes, I did.

2 Q. And where was that at?

3 A. That was at our wholesale yard located at 6750
4 North Viewpoint Drive, Prescott, Arizona.

5 Q. Do you still own that property?

6 A. Yes, we do.

7 Q. Do you recall when you acquired it?

8 A. In 1991.

9 Q. When did you acquire the property that is the
10 subject of this litigation?

11 A. In April of 1998.

12 Q. Okay. Now you made reference to a wholesale
13 yard. What is your current employment, ma'am?

14 A. I'm sorry?

15 Q. What is your current employment? What do you do
16 for a living?

17 A. Owner of the Prescott Valley Growers.

18 Q. And how long have you been engaged in that
19 business?

20 A. Since 1991.

21 Q. Prior to that time, what did you do?

22 A. I taught school.

23 Q. Where at?

24 A. I taught school in the Balsz School District in
25 Phoenix, Arizona, for thirty years.

1 Q. You mentioned that you were the owner of Prescott
2 Valley Growers. Is your husband also an owner?

3 A. Yes, he is.

4 Q. Are there any other owners?

5 A. Two of my sons are also owners. My son Alan and
6 my son Jimmy.

7 Q. Where do Alan and Jimmy reside?

8 A. Alan resides in Prescott and Jimmy resides at the
9 wholesale yard.

10 Q. Have you ever been a party to a litigation
11 before, other than this case? Have you ever sued or
12 been sued?

13 A. We are involved in a lawsuit, a different one at
14 this time.

15 Q. Okay. Are you the plaintiff or the defendant?

16 A. I am the defendant.

17 Q. And who is the plaintiff?

18 A. Mile High Rock.

19 Q. What is the nature of that suit?

20 A. Money.

21 Q. Is it a breach of contract? Is it a negligence
22 claim? Can you tell me a little bit about it?

23 A. It is a failure to pay for product.

24 Q. Do you recall when that suit was filed?

25 A. Possibly in February of 2004.

1 Q. Can you tell me where in the -- What point in the
2 litigation are you in with that suit?

3 A. I don't know.

4 Q. Okay. Who is your attorney? Is Mr. Adams
5 representing you in that?

6 A. No, he isn't.

7 Q. Do you have an attorney that is representing you?

8 A. Yes, but my son Alan is taking care of that
9 lawsuit and he would know the answer to that.

10 Q. Okay. But you haven't been deposed in that
11 lawsuit?

12 A. No.

13 Q. Any other lawsuits?

14 A. No, ma'am.

15 Q. Was that lawsuit, the one that Mile High Rock
16 filed, is that in Yavapai County?

17 A. Yes, it is.

18 Q. Is it in Superior Court?

19 A. Yes, it is.

20 Q. What is your educational background? You said
21 you were a teacher, so I assume you graduated from high
22 school; is that correct?

23 A. Yes.

24 Q. Do you recall when and where?

25 A. I graduated from Liberty Vale High School in

1 Libertyville, Illinois, in 1950.

2 Q. And subsequent to your graduation from high
3 school, did you undertake any other education?

4 A. Absolutely.

5 Q. What did you do, ma'am?

6 A. I have a BA and an MA from Arizona State
7 University.

8 Q. And what was your major, ma'am?

9 A. Elementary education.

10 Q. Do you recall when you received your BA?

11 A. It was in 1955.

12 Q. And your master's?

13 A. That was about 1964.

14 Q. Any other educational training?

15 A. No.

16 Q. Okay. No vocational schools? Business courses?
17 Anything like that?

18 A. At one time I attended business college in
19 Phoenix before I entered Arizona State.

20 Q. And how long did you attend business college?

21 A. About one year.

22 Q. And what was your course of study there?

23 A. Actually, it was to refresh my shorthand, but I
24 wasn't able to do that and I went on to the stenotype
25 machine. I decided I really didn't like business

1 classes. I had always wanted to be a teacher and so I
2 decided to leave business college to attend Arizona
3 State.

4 Q. What made you decide after your career as a
5 teacher to go into business then?

6 A. We owned property in Apache Junction and decided
7 to put it to use in the form of a nursery. My husband
8 had recently retired from teaching and we developed the
9 property for a nursery to give him work and myself.

10 Q. When you say we owned property in Apache Junction
11 and we decided to develop it for a nursery, who is we?
12 Who do you mean by that?

13 A. We is my husband and myself.

14 Q. And when did you undertake that process of
15 developing that land and making it into a nursery?

16 A. 1985

17 Q. Is it still being used as a nursery?

18 A. Yes, it is.

19 Q. Is it open to the public?

20 A. Yes, it is.

21 Q. What is the name of it, ma'am?

22 A. The name of it is Shady Way Gardens and it is
23 leased from us by Paul and Sara McComb.

24 Q. When you say it is leased from you, what exactly
25 is leased?

1 A. About one and a quarter acre of our property
2 there is leased as a nursery.

3 Q. So Shady Way Gardens is operated by the lessees?

4 A. Yes, it is.

5 Q. And when did they undertake that lease?

6 A. I would say about 1998.

7 Q. What was your motivation in leasing the business?

8 A. We had started our project in Prescott Valley and
9 were consumed with it and decided to lease out the
10 Apache Junction property.

11 Q. So the lease is for the real property, the land,
12 as well as the business; correct?

13 A. No. It is only the real property that is leased.

14 Q. What is currently on the land then? What are the
15 lessees doing with the land?

16 A. They have nursery product.

17 Q. Do you still own the store or the business that
18 operates on the premises?

19 A. No, we don't.

20 Q. Okay. So Shady Way Gardens is no longer in
21 business at that location?

22 A. Yes, it is. Maybe one of your previous questions
23 -- Can we go back to a previous question?

24 Q. Oh, sure. Absolutely. I'm just trying to
25 understand. When you say that it was leased in 1998 and

1 you said the property was leased, the one and a quarter
2 acres, but the business was not leased?

3 A. We had closed our business there, which was
4 called the Green Nugget Nursery.

5 Q. Okay.

6 A. We closed that because of our business here.

7 Q. And that was in 1998, you closed the business?

8 A. Yes.

9 Q. And then you leased out the property in Apache
10 Junction?

11 A. Yes.

12 Q. And that property consists of one and a quarter
13 acre?

14 A. The part that is leased, yes.

15 Q. How much is not leased?

16 A. Well, we still own two and a half acres that
17 adjoins the nursery property and we operate that as an
18 RV storage lot.

19 Q. What is the name of that RV storage lot?

20 A. The Green Nugget RV Storage.

21 Q. And how long have you operated the Green Nugget
22 RV Storage? If you know, if you recall?

23 A. I would say since about 1989.

24 Q. Has it always been located in Apache Junction?

25 A. Yes.

1 Q. On the property that you own there?

2 A. Yes.

3 Q. What type of business entity is Prescott Valley
4 Growers?

5 A. It is a partnership.

6 Q. Okay. Is there a written partnership agreement?

7 A. No. There is not.

8 Q. Just a verbal agreement between you, your husband
9 and your two sons?

10 A. It is an undocumented agreement.

11 Q. Meaning it is oral?

12 A. Yes.

13 Q. Okay. What is -- What are the terms of that
14 agreement? Let me break it down for you. How much do
15 you own in the business?

16 A. Myself?

17 Q. Yes.

18 A. Forty-five percent.

19 Q. How much does your husband own?

20 A. Forty-five percent.

21 Q. How much does your son Alan own?

22 A. Five percent.

23 Q. And Jimmy, the other five?

24 A. Yes.

25 Q. Do you share in the profits and losses on that

1 basis, that percentage split?

2 A. Yes, we do.

3 Q. Is there a manager, a managing partner?

4 A. No.

5 Q. Who makes the day-to-day decisions concerning the
6 operation of Prescott Valley Growers?

7 A. We all do.

8 Q. Okay. Anybody or any one of you or your partners
9 in charge of hiring or firing of employees?

10 A. No.

11 Q. Okay. How many employees do you have?

12 A. About thirty.

13 Q. Is that at both locations?

14 A. That is at three different locations.

15 Q. Those three, just so we are clear, those three
16 locations are the property in Coyote Springs; correct?

17 A. Yes.

18 Q. The property on North Viewpoint Drive?

19 A. Yes.

20 Q. And the third property is?

21 A. It is our retail nursery at 6195 East Highway 69,
22 in Prescott Valley.

23 Q. Of the approximate thirty employees that you
24 have, how many are at the retail location?

25 A. About eight.

1 Q. How many are at the Viewpoint Drive location?

2 A. About nineteen.

3 Q. And the rest are at the Coyote Springs location?

4 A. Yes.

5 Q. How long has that retail location on Highway 69
6 been in operation?

7 A. Since 1993.

8 Q. Are all three of those locations operated under
9 the name Prescott Valley Growers?

10 A. No.

11 Q. Okay. The retail location on Highway 69, what is
12 the name of that business?

13 A. Prescott Valley Nursery.

14 Q. On Viewpoint Drive?

15 A. Prescott Valley Growers.

16 Q. And Coyote Springs?

17 A. I don't know that we have called that property by
18 any name.

19 Q. Do you have a sign on the Coyote Springs
20 property?

21 A. No. We do not.

22 Q. The Coyote Springs property is used as a nursery;
23 correct?

24 A. No. It is not.

25 Q. What is it used for, ma'am?

1 A. It is a growing yard for our excess inventory.

2 Q. The partnership that you have with your husband
3 and your two sons, what does that relate to? Is it all
4 three of those business locations?

5 MR. ADAMS: Object to the form of the
6 question.

7 Q. (Continued by MS. KIRK:) You can go ahead and
8 answer.

9 A. Would you mind repeating the question?

10 Q. Sure. You testify that you have a partnership;
11 you, your husband and your two sons? Correct?

12 A. Yes.

13 Q. And that partnership is a forty-five, forty-five,
14 ten split; correct?

15 A. Yes.

16 Q. Now the partnership concerns what business?

17 A. It concerns all of the properties.

18 Q. Okay. And when you say all of the properties,
19 what specifically are you referring to?

20 A. The three properties that we discussed.

21 Q. Okay. So the Coyote Springs property; correct?

22 A. Yes, but the business is not on that property.

23 Q. Okay. I'm just trying to clarify.

24 A. Okay.

25 Q. The three properties you say are part of the

1 assets of the partnership are the Coyote Springs
2 property; correct?

3 A. Yes.

4 Q. The property on Highway 69; correct?

5 A. Yes.

6 Q. And the property on Viewpoint Drive?

7 A. Yes.

8 Q. It doesn't cover the property in Apache Junction?

9 A. No. It does not.

10 Q. Does the partnership assets also include the
11 business on Viewpoint Drive?

12 A. Yes, it does.

13 Q. Does it also include the business, the retail
14 business on Highway 69?

15 A. Yes, it does.

16 Q. Does it also include any business on the Coyote
17 Springs property?

18 MR. ADAMS: Object to the form of the
19 question.

20 Q. (Continued by MS. KIRK:) Is there a business in
21 operation on the Coyote Springs property?

22 A. There is not.

23 Q. Okay. You've testified that the Coyote Springs
24 property was used as a growing yard for excess
25 inventory; correct?

1 A. Yes, I did.

2 Q. By excess inventory, what are you referring to?

3 A. Excess meaning property that we don't have room
4 for on the other two properties.

5 Q. And what does that inventory consist of, if you
6 can break it down for me?

7 A. At the present time, it is fifteen-gallon-size
8 trees and twenty-four inch box trees and thirty-six inch
9 box trees.

10 Q. Anything else?

11 A. No.

12 Q. And you said that is presently what is on the
13 property?

14 A. Yes.

15 Q. In prior years, what else has been on the
16 property?

17 A. The same thing.

18 Q. Okay. So essentially the property in Coyote
19 Springs has been the home for excess trees of various
20 sizes; is that correct?

21 MR. ADAMS: Object to the form of the
22 question. You can answer.

23 THE WITNESS: Yes.

24 Q. (Continued by MS. KIRK:) Any shrubs on the
25 Coyote Springs property?

1 A. There are some.

2 Q. How would you describe those shrubs in your
3 inventory?

4 A. There are fifteen-gallon-size shrubs and
5 five-gallon-size shrubs.

6 Q. Anything else?

7 A. No.

8 Q. Flowers?

9 A. No.

10 Q. Ma'am, what is the difference between a nursery
11 and a growing yard?

12 A. I would say that a nursery is a facility for
13 people to come to, to shop and purchase all different
14 kinds of items; flowers, roses, vegetables, fruits,
15 fruit trees. It is a place, a retail facility.

16 Q. So a nursery is something that is open to the
17 public in other words?

18 A. I think so.

19 Q. When you described your property on Viewpoint
20 Drive as a wholesale yard, is that a nursery?

21 A. It is a facility where wholesalers can come to
22 purchase trees and plants because at that facility, we
23 do have thirty greenhouses that house a huge variety of
24 material, plant material.

25 Q. What are the differences between your facility on

1 Viewpoint Drive and your facility in Coyote Springs?

2 MR. ADAMS: Object to the form of the
3 question. You can --

4 Q. (Continued by MS. KIRK:) Let me back up. Just
5 so you know, ma'am, from time to time when your attorney
6 objects, you can go ahead and answer the question as
7 posed unless he instructs you not to answer. Okay?

8 A. Okay.

9 Q. Are there greenhouses on the Coyote Springs
10 property?

11 A. There are not. The difference between that
12 facility and the one on Viewpoint --

13 Q. The difference between -- I didn't catch that.

14 A. The difference between Coyote Springs and
15 Viewpoint Drive is that no business occurs in Coyote
16 Springs. There are no sales and no transactions there,
17 whatsoever. It is not open to the public.

18 Q. Your Viewpoint Drive property is open to the
19 public?

20 A. It is open to wholesalers.

21 Q. Are you then -- Is your business then a seller to
22 wholesalers?

23 A. Which one?

24 MR. ADAMS: Object to the form.

25 Q. (Continued by MS. KIRK:) Is your business and --

1 When I say business, I'm referring to Prescott Valley
2 Growers, the business on Viewpoint Drive. Sales are
3 made to wholesalers; is that correct?

4 A. Yes.

5 Q. What wholesalers? Can you give me some names?

6 A. Tropicare Landscaping, Taylor Works, Land Works,
7 Mountain Path Landscaping, Arid Scapes, Biddle Nursery,
8 Watters Nursery. There are many of them.

9 Q. Are they pretty much, or generally speaking,
10 local to Yavapai County or to Prescott?

11 A. Some of them are in the Sedona area.

12 Q. Okay. Is there a cash register at the Viewpoint
13 Drive location?

14 A. There is not.

15 Q. Is there an office building at the Viewpoint
16 Drive location?

17 A. Yes.

18 Q. How do your wholesalers who purchase at your
19 Viewpoint Drive location pay?

20 A. Some of them are charge accounts. Some pay by
21 check. Some charge with credit cards.

22 Q. If they charge by credit card or pay by check,
23 physically how is that done if there is no cash register
24 at the Viewpoint Drive location?

25 A. Their check is paper clipped to their invoice and

1 put on my desk. We have a credit card machine at that
2 location for credit card purchases.

3 Q. And where is your desk?

4 A. It is in the middle office.

5 Q. Is it at the Viewpoint Drive location?

6 A. Yes, it is.

7 Q. Do you also have a work area at the retail
8 location?

9 A. No, I don't.

10 Q. Do you have a work area at the Coyote Springs
11 location?

12 A. No, I don't.

13 MR. ADAMS: Object to the form.

14 Q. (Continued by MS. KIRK:) Does your husband have
15 a desk at the Viewpoint Drive location?

16 A. He does not.

17 Q. Do your sons, either of your sons?

18 A. My son Jimmy does.

19 Q. The excess inventory that you have at the Coyote
20 Springs property, does that go to either your retail
21 location or your wholesale location?

22 A. Yes, it does.

23 Q. How does -- That excess inventory, how does that
24 arrive at the Coyote Springs property?

25 A. Comes by truck, our trucks.

1 Q. What types of trucks are those?

2 A. We have a twenty-four foot van. We have a
3 twenty-four foot stake bed truck.

4 Q. How many of those trucks?

5 A. Two stake bed trucks.

6 Q. How many vans?

7 A. Two vans.

8 Q. Any other type of vehicles used for transporting
9 the excess inventory?

10 A. Somctimes we use small Toyota trucks, depending
11 on how many plants we are transporting.

12 Q. How many small Toyota trucks do you have?

13 A. We have three.

14 Q. From whom do you purchase your goods that you
15 sell?

16 MR. ADAMS: Object to the form.

17 Q. (Continued by MS. KIRK:) All right. Let me back
18 up. Where do you obtain the trees?

19 MR. ADAMS: Object to the form.

20 Q. (Continued by MS. KIRK:) Do you grow your
21 inventory from seedlings?

22 A. No. I'm going to answer, I just needed a little
23 time here.

24 Q. Okay. That's fine.

25 A. We buy trees in from Oregon and from California.

1 Q.. Any other states?

2 A. Yes, come to think of it; Colorado and on
3 occasion, we'll buy other trees or plants in from
4 Arizona Growers.

5 Q. When you say that you purchase or buy these trees
6 from these growers in these four states, what are the
7 size of those trees at the time you purchase them?

8 A. In the winter time, about the middle of January,
9 we buy in bare root trees and those trees have to be
10 potted up upon arrival. We also buy in five-gallon-size
11 trees, fifteen-gallon-size trees and box size trees,
12 particularly, if we can't provide them ourselves.

13 Q. How often do you make purchases from growers
14 throughout the year?

15 A. Bare root trees are purchased once a year. The
16 other trees are purchased periodically throughout the
17 year, possibly as often as twice a month.

18 Q. On average when you purchase trees periodically
19 throughout the year and you said two times a month,
20 approximately two times a month, how many trees is that
21 that you are purchasing at that time?

22 MR. ADAMS: Object to the form.

23 THE WITNESS: It is usually a combination of
24 shrubs and trees. It would be hard to say how many
25 exactly, or to guess.

1 Q. (Continued by MS. KIRK:) Do you have written
2 records of all your purchases?

3 A. Absolutely.

4 Q. How far back do they go?

5 A. About five years.

6 Q. Ma'am, I'm unfamiliar with your type of nursery
7 business in general terms, so what I'm trying to
8 determine is when you purchase these trees from these
9 growers, for instance you say five gallon, fifteen
10 gallon and box-size trees; correct?

11 A. Yes.

12 Q. Are those the same five gallon, fifteen gallon
13 and box-size trees that are at any one of your three
14 locations?

15 MR. ADAMS: Object to the form.

16 THE WITNESS: Not really. The trees in
17 Coyote Springs have either been potted up as bare root
18 trees or bumped up from one size to another and require
19 a time frame to become ready for market.

20 Q. (Continued by MS. KIRK:) Generally speaking,
21 from the time that you receive trees from a grower, how
22 much time is required before they are ready for market?

23 A. Some of them are ready immediately. We say that
24 those trees are brokered in. The trees that are potted
25 up to grow would take different periods of time to

1 become a finished product. A five gallon plant might be
2 bumped up to a fifteen gallon bucket and take several
3 months to root out and become a finished product. One
4 gallons can be bumped up to a five-gallon-size. It is
5 from five to ten to fifteen to boxes.

6 Q. How many of the trees that you buy on -- Let me
7 go back. Of the trees and shrubs that you buy from
8 these growers on an annual basis, how many are brokered,
9 those that are ready for immediate sale?

10 A. I have no idea.

11 Q. Percentage wise?

12 MR. ADAMS: Object to the form.

13 THE WITNESS: I honestly don't know.

14 Q. (Continued by MS. KIRK:) Okay. Do you have
15 written records as to how many trees you buy annually
16 that are brokered versus those that are potted up or
17 bumped up?

18 A. I would not be able to differentiate the two.

19 Q. Over the course of a year, how many trees,
20 shrubs, or any other types of plants do you purchase
21 from growers?

22 A. I honestly don't know. I know that all of the
23 product in Coyote Springs is there to grow. It is not
24 there to move immediately.

25 Q. So when you say all of the trees and shrubs at

1 the Coyote Springs property are there to grow, you are
2 referring to these potted or bumped up trees and shrubs?
3 What are you --

4 MR. ADAMS: Object to the form.

5 THE WITNESS: Bare root trees and bumped up
6 material.

7 Q. (Continued by MS. KIRK:) When you purchase bare
8 root trees from any of those growers, where are they
9 shipped to? Where are they delivered to?

10 MR. ADAMS: Object to the form.

11 THE WITNESS: They can be shipped to either
12 the wholesale yard or to the Coyote Springs yard,
13 depending on whether we can get them potted up
14 immediately or not. Sometimes they have to go into the
15 greenhouses and those are only at the wholesale yard.

16 Q. (Continued by MS. KIRK:) Why would some shrubs,
17 trees or plants go to a greenhouse?

18 A. They can't be left out in the cold weather.

19 Q. During the fall and winter months, are there
20 trees, shrubs or any other plants that are growing at
21 the Coyote Springs property?

22 A. Everything that is there is growing, but it
23 certainly is slowed down in the winter.

24 Q. In other words, what I'm asking, ma'am, is during
25 the cold winter months here, are there still trees that

1- you are growing located at the Coyote Springs property
2 or does everything have to get moved over to a
3 greenhouse?

4 A. Oh, no. The trees stay in Coyote Springs. Their
5 growth is much slower. In fact, it is probably dormant
6 in the wintertime because they are out in weather.

7 Q. Who is in charge between you, your husband and
8 your two sons, with respect to ordering inventory?

9 A. My son Jimmy and I do the ordering, for the most
10 part.

11 Q. The trees, plants and shrubs that you have at the
12 Coyote Springs property, where do they go next?

13 A. When they are ready, they can go either to the
14 retail yard or to the wholesale yard.

15 Q. How are they transported?

16 A. By our trucks.

17 Q. And when you say our trucks, are you referring to
18 the van, stake bed trucks and the small Toyota trucks?

19 A. Yes, I am.

20 Q. Any other means of transportation?

21 A. No.

22 Q. When you obtained -- pardon me -- When you obtain
23 your inventory from growers out of state, how are they
24 transported?

25 A. By semi trucks.

1 Q. Are they your trucks or are they the grower
2 trucks or are they independent contractors?

3 A. They are --

4 MR. ADAMS: Object to the form of the
5 question.

6 Q. (Continued by MS. KIRK:) Who owns the trucks?

7 A. Usually it is common carriers.

8 Q. When you purchased the Coyote Springs property,
9 if I understand your testimony correct, this was not the
10 first time that you purchased real property?

11 A. Correct.

12 Q. Is this your most recent purchase of real
13 property?

14 A. It is.

15 Q. And you testified that you purchased it in April
16 of '98; is that correct?

17 A. That's correct.

18 Q. Prior to the purchase of the Coyote Springs
19 property, how many other times had you purchased real
20 property?

21 A. In my lifetime? Is that what you mean?

22 Q. Yes.

23 A. Maybe seven times.

24 Q. Do you own the property on east Highway 69?

25 A. No, I don't.

- 1 Q. Okay. Is that leased?
- 2 A. It is leased.
- 3 Q. And the property on Viewpoint Drive, you own
- 4 that; correct?
- 5 A. Yes, we do.
- 6 Q. At the time that you purchased the Coyote Springs
- 7 property, was it unimproved?
- 8 A. It was.
- 9 Q. Were you specifically looking for vacant land at
- 10 that time?
- 11 A. Yes, we were.
- 12 Q. Why?
- 13 A. We had no residence here and we felt a need for
- 14 more property for Prescott Valley Growers.
- 15 Q. Any other reasons?
- 16 A. No.
- 17 Q. You indicated that you had no residence. Were
- 18 you not living, during the year, at the Viewpoint Drive
- 19 property?
- 20 A. We lived with my son, Jimmy, and I also had a
- 21 motor home on that property.
- 22 Q. And that property being the Viewpoint Drive
- 23 property?
- 24 A. Yes.
- 25 Q. And that was since 1991?

1 A. Yes.

2 Q. You stated one of your reasons for looking for
3 vacant land was the need for more property for the
4 business; correct?

5 MR. ADAMS: Object to the form of the
6 question.

7 Q. (Continued by MS. KIRK:) Did I misstate your
8 testimony, ma'am? If I did, I didn't mean to.

9 A. No. I said that.

10 Q. You said you needed more property; correct?

11 A. Yes.

12 Q. And the property would be used for what?

13 A. For a holding yard. There was no intention to
14 have a business on that property. We also had two
15 business properties; a retail yard and a wholesale yard.

16 Q. Well, the property was going to be used in
17 conjunction with your business at the retail yard and
18 wholesale yard; wasn't it?

19 MR. ADAMS: Object to the form of the
20 question.

21 THE WITNESS: You could say that.

22 Q. (Continued by MS. KIRK:) At the time that you
23 purchased the Coyote Springs property, were you
24 represented by a real estate agent?

25 A. Yes, I was.

1 Q. Do you recall that individual's name or the firm?

2 A. Her name was Waneta Offerman.

3 Q. And who did or who does Waneta work for?

4 A. Pardon?

5 Q. Was it Waneta or Anita?

6 A. Waneta, with a W.

7 Q. And at that time who did she work for?

8 A. Realty Executives.

9 Q. Had you used her before for any other purchase?

10 A. No.

11 Q. How did you come in touch with her?

12 A. Her sign was on the property in question.

13 Q. How did you become aware of the Coyote Springs
14 property being for sale?

15 A. Through the Weir Racing Stables, because the
16 racing stables had provided us with manure for our
17 plants since we first started growing plants in Prescott
18 Valley in 1991. We were aware of where they were
19 located and that's what brought us to that area.

20 Q. Did you look at any other areas?

21 A. We probably drove through Prescott Ridge because
22 we were looking for more than just a home site.

23 Q. Any other areas that you recall?

24 A. No.

25 Q. How long did you look for property?

1 A. I don't really know.

2 Q. Okay. Now you said that you were looking for
3 more than a home when you were looking for property.
4 Did you have any particular requirement as to the size
5 of the property you wanted to purchase?

6 A. No, I didn't.

7 Q. Fair to say that you wanted more than an acre?

8 A. It is.

9 Q. Fair to say that you wanted more than five acres?

10 A. You can't buy five acres in Coyote Springs. You
11 can only purchase ten or more.

12 Q. Okay. But at the time that you are just looking
13 for property, generally speaking, did you have in your
14 mind that you were hoping or wanting to get more than
15 five acres?

16 A. We thought about ten acres.

17 Q. Okay. So one requirement in the land that you
18 were looking for was that it be approximately ten acres;
19 is that correct?

20 A. It is.

21 Q. Any other requirements, aside from it being
22 vacant or be unimproved?

23 A. I don't think so.

24 Q. What about zoning? Was that a consideration?

25 A. Because we knew of this racing stables, zoning

1 was never considered.

2 MR. ADAMS: Do you mind if we take a break?

3 MS. KIRK: No. Not at all. I was going to
4 suggest one. Sure. Now is as good of time as any. Off
5 the record.

6 (Whereupon, a recess was taken from 9:58 a.m. to
7 10:10 a.m.)

8 Q. (Continued by MS. KIRK:) All right. Prior to
9 the break, we were talking about the requirements that
10 you were looking at in terms of the land you were hoping
11 to buy at the time in approximately 1998 and you had
12 testified you were looking, you and your husband were
13 looking for approximately ten acres vacant and zoning
14 was not a consideration; correct?

15 A. Correct.

16 Q. Any other requirements that you can think of?

17 A. We wondered about the availability of water.

18 Q. Anything else?

19 A. No.

20 Q. As to the availability of water, what were your
21 specific concerns in that area?

22 A. That there was water. There are areas in Coyote
23 Springs that don't have water. They are on shelves.

24 Q. They are on what?

25 A. Shelves.

1 Q. Oh, shelves. In terms of water, were you looking
2 at whether or not the property had access to PV's water
3 supply or whether it had a well?

4 A. No. Neither of those. There was no well on the
5 property. Water from Prescott Valley is no where near
6 that location.

7 Q. How do you obtain water for the Coyote Springs?

8 A. You drill a well.

9 Q. So you currently have water at the Coyote Springs
10 property from a well?

11 A. Yes, we do.

12 Q. At the time that you purchased the property in
13 '98, had a well already been drilled?

14 A. No.

15 Q. Did you inquire of the real estate agent as to
16 that water requirement, if there was no well on the
17 property?

18 A. I don't think we did.

19 Q. Did you speak with Waneta concerning any of these
20 requirements that you had?

21 A. She knew that we had the nursery in Prescott
22 Valley and she knew of our wholesale yard.

23 Q. Did she know what you wanted in terms of use of
24 the land?

25 A. She did ask us.

1 Q. And what did you tell her?

2 A. We told her that we were going to grow plants and
3 trees there.

4 Q. Did she say anything to you concerning that?

5 A. I think she said that should be fine.

6 Q. Your home in Scottsdale, ma'am, that you reside
7 at, is that in a subdivision?

8 A. Yes, it is.

9 Q. What subdivision?

10 A. Paradise Heights.

11 Q. Do you have a homeowner's association?

12 A. No.

13 Q. Are there any restrictions, covenants or
14 conditions?

15 A. I believe so.

16 Q. Do you know what restrictions -- Actually, let me
17 rephrase that question. In general terms, do you know
18 what CC&R's are?

19 A. Yes, I do.

20 Q. How do you know?

21 A. I learned about them after the purchase of the
22 Coyote Springs property.

23 Q. Any of the land that you had purchased in your
24 approximate seven transactions previous to the Coyote
25 Springs property, at any time in any of those were you

1 aware of CC&R's?

2 MR. ADAMS: Object to the form.

3 THE WITNESS: No.

4 Q. (Continued by MS. KIRK:) Do you know what title
5 insurance is?

6 A. Basically.

7 Q. Did you obtain title insurance or otherwise have
8 title insurance on the Coyote Springs property?

9 A. Yes, we do.

10 Q. Did you review the property itself?

11 A. I did not.

12 Q. Do you recall when it was provided to you?

13 A.. At the time of purchase.

14 Q. When you say at the time of purchase, was that at
15 the time of close of escrow on the property?

16 A. I would say so.

17 Q. You indicated that you had become aware of the
18 Coyote Springs property or that subdivision from having
19 obtained manure since 1991 from Weir Racing Stables; is
20 that correct?

21 A. That's correct.

22 Q. Do you know the people that own Weir Racing
23 Stables?

24 A. I do not know them personally.

25 Q. Do you know what they do at that property?

1 A. They have stables, a starting gate. They train
2 race horses.

3 Q. Do you know if they own those race horses that
4 they train?

5 A. I believe they do.

6 Q. Do you consider it a business?

7 A. Absolutely.

8 Q. Why?

9 A. The horses are there to train and race for a
10 profit.

11 Q. Do you grow your trees and shrubs for a profit?

12 A. Yes, we do.

13 Q. Any other reason you consider Weir Racing Stables
14 to be a business?

15 A. Let me think. I am referring to the Yavapai
16 County Agricultural Guidelines and I am reading about an
17 equestrian operation on fifty acres which is what the
18 Weir Stables is composed of and the commercial activity
19 on that property is described as the training and
20 boarding of race horses. So I do consider it a big
21 business.

22 Q. How did you obtain that document, ma'am, the
23 Yavapai County Agricultural Guidelines?

24 A. From the office on Fair Street.

25 Q. When?

1 A. When I first got my agricultural exemption, which
2 was in January of 2001.

3 Q. Is Weir Stables on fifty acres of land?

4 A. Yes, it is.

5 Q. How do you know?

6 A. I have a map of the Coyote Springs Ranch area.

7 Q. When did you obtain that map?

8 A. Last year.

9 Q. Why?

10 A. I obtained it when the original lawsuit was filed
11 against us.

12 Q. When you say original lawsuit, you are referring
13 to this litigation; correct?

14 A. I don't think so. Maybe it is. It's the same
15 one, but it was opened by a different law firm.

16 Q. Robert Launders?

17 A. Yes.

18 Q. What is the year of the Yavapai County
19 Agricultural Guidelines that you are referring to?

20 A. They are not dated. Actually, on the last page
21 it says 12/01/99.

22 Q. Any objection to my looking at them, ma'am?

23 A. No.

24 Q. Any objection to my making a copy of them?

25 MR. ADAMS: No.

1 Q. (Continued by MS. KIRK:) Let me get a quick copy
2 made. Before I do, ma'am, I notice there is some
3 handwriting on the first page of this document. Is that
4 your handwriting?

5 A. Yes, it is.

6 Q. And I also notice that there is some handwriting
7 on the very back page. Is that yours also, ma'am?

8 A. It is.

9 Q. Does that pertain to this suit?

10 A. No, it doesn't.

11 MS. KIRK: I'm going to quickly make a copy
12 of it.

13 (Whereupon, a brief recess was taken.)

14 MS. KIRK: Do you need a break?

15 MR. ADAMS: Do you mind? There was
16 something that she said that I need to talk to her
17 about.

18 MS. KIRK: No. Five minutes? That gives me
19 time to get that copied.

20 (Whereupon, a recess was taken from 10:26 a.m. to
21 10:33 a.m.)

22 Q. (Continued by MS. KIRK:) You were testifying,
23 ma'am, just before your attorney requested a break, as
24 to why you believe Weir Stables is a business. You
25 mentioned or you made reference to the Yavapai County

1 Agricultural Guidelines. - Any other reason why you
2 consider Weir Stables to be a business?

3 A. I said that they train race horses there; did I
4 not?

5 Q. Yes, you did.

6 A. And they house employees there.

7 Q. How do you know?

8 A. We work with the manager of the stables.

9 Q. Who is that?

10 A. His name is Dave.

11 Q. Last name?

12 A. I don't know. He calls us when he has horse
13 manure ready for us or we call him when we need it.

14 Q. Do you pay for the manure?

15 A. No, we don't.

16 Q. How do you know then from Dave that there are
17 employees that live on the property?

18 A. Dave hasn't told us that. We just see the --
19 Years ago, when we first started growing plants in
20 Prescott Valley, we had a man named Shawn that came to
21 us looking for work. He trained horses at these
22 stables.

23 Q. Weir Stables?

24 A. At Weir Stables. We hired him for work, but he
25 continued to train at the stables. So he worked

1. part-time there and part-time for us. He really didn't
2 live on the stables, but he told us there were other
3 fellows living there that took care of the horses and
4 the training of them.

5 Q. How many years ago was that?

6 A. Pardon?

7 Q. You said that you had spoken with Shawn or Shawn
8 came to you looking for a job several years ago. How
9 many years ago?

10 A. That was 1991.

11 Q. At the time that you purchased the property in
12 '98, did you have any personal knowledge that employees
13 of Weir Racing Stables were living on the property?

14 A. No.

15 Q. Sitting here today, do you have any personal
16 knowledge that employees of Weir Racing Stables are
17 living on that property?

18 A. No.

19 Q. Do you have any personal knowledge of how many
20 employees Weir Racing Stables has?

21 A. No, I don't.

22 Q. Ma'am, returning to your reference to the Yavapai
23 County Agricultural Guidelines, you had indicated that
24 this was or this contained criteria as to what a
25 business was; is that correct?

1 A. It identifies commercial equestrian activity
2 versus agricultural equestrian activity.

3 Q. Can you tell me on what page of this that you are
4 referring?

5 A. I think it is the last page.

6 Q. Anything else in here that tells you what a
7 business is?

8 A. I really don't use those guidelines to identify
9 businesses as such. I use the guidelines for my own
10 agricultural activity and those guidelines are on page
11 eight.

12 Q. Turning to page eight, ma'am, if you would. And
13 the guidelines you were testifying to?

14 A. Under item six, high density use, the first
15 paragraph describes our activity in Coyote Springs, or
16 what we intended to be our activity there.

17 Q. The first paragraph?

18 A. Yes.

19 Q. The first sentence: High density agricultural
20 use defined as intensive use of land for production of a
21 high yield crop or commodity.

22 Do you see that language?

23 A. Yes, I do.

24 Q. Is it your position that use of the land in this
25 manner is not business related?

1 A. - That's correct.

2 Q. Why?

3 A. The agricultural exemption we obtained for that
4 land is for agricultural use on agricultural land.

5 Q. What does your exemption provide, do you know?
6 What are you exempt from?

7 A. High property taxes.

8 Q. Anything else?

9 A. I don't think so. Actually, we are exempt from
10 -- We are exempt from the amount, the number of
11 dwellings we can have on that property. We can have as
12 many dwellings as we have employees. Let's see. We are
13 exempt from permits for certain buildings that we need
14 for our agricultural activity.

15 Q. Anything else?

16 A. There may be more I'm not sure of right now.

17 Q. And that exemption pertains to Yavapai County;
18 correct?

19 A. Yes, it does.

20 Q. Who obtained the exemption?

21 A. I did.

22 Q. Did you fill out paperwork for it?

23 A. Originally we filed for an agricultural exemption
24 for our Viewpoint property. Then we filed for one in
25 Coyote Springs.

1 Q. When did you make the application for the
2 Viewpoint property?

3 A. I don't remember.

4 Q. Do you recall when you made the application for
5 the Coyote Springs property?

6 A. That was in January of 2001.

7 Q. Did you obtain the exemption for the Viewpoint
8 property?

9 A. Yes. We have that.

10 Q. Did you obtain it for the Coyote Springs
11 property?

12 A. Yes.

13 Q. Is that exemption still valid and effective
14 today?

15 A. Yes, it is.

16 Q. How long does an exemption last for? Do you
17 know?

18 A. It can be reviewed every year and -- What's the
19 best word here. It can be reviewed every year and
20 renewed if you are doing what you are supposed to be
21 doing according to your application.

22 Q. Did you fill out that application?

23 A. I'm not sure.

24 Q. Do you have a copy of the application?

25 A. I have one right here. I have the Coyote

1 Springs. I signed it. It was typed probably at their
2 office. Would you like to see it?

3 Q. Yes, I would. Any objection to me having a copy
4 of this?

5 A. Not at all.

6 Q. Okay. Ma'am, I am going to direct your attention
7 back to the definition on the first paragraph, high
8 density use, on page eight of the guidelines.

9 A. Okay.

10 Q. The second to the last sentence in the first
11 paragraph says: To qualify for valuation as high
12 density agricultural land, the primary use of the land
13 must be for production of a high yield agricultural crop
14 or commodity. Do you see that language?

15 A. Yes, I do.

16 Q. Would you agree with me that that language
17 applies to your property in Coyote Springs?

18 A. I would agree that that sentence is defined in
19 the next sentence.

20 Q. Okay. How do you -- What do you mean by that?

21 A. In the sentence you referred to, it talked of a
22 high yield agricultural crop or commodity and then the
23 next sentence gives you an example of what they are
24 talking about, such as: Flowers, ornamental plants,
25 rose bushes, trees other than standing timbers and

1 greenhouses.

2 Q. Okay. So does that then apply to your land?

3 A. Yes, it does.

4 Q. Okay. At the time that you closed escrow on the
5 Coyote Springs property, do you recall where that was
6 at, what office that was at?

7 A. On Montezuma.

8 Q. Is that a title company?

9 A. That is Capital Title Company on Montezuma.

10 Q. Do you recall who was present at the time?

11 A. Of the United States?

12 Q. No. I'm sorry, who was present at the time of
13 your closing?

14 A. I'm sorry, I have hearing aids on. Who was
15 present at the time of that closing?

16 Q. Yes. You were present?

17 A. Yes.

18 Q. Was your husband present?

19 A. Yes. He was present.

20 Q. Was there a title officer present from the title
21 company?

22 A. Yes. I believe her name was Lisa Favor.

23 Q. Anybody else?

24 A. I don't think so.

25 Q. Do you recall what documents you signed at that

1 time?

2 A. I do not.

3 Q. Would you have signed a deed?

4 A. Did we sign a deed?

5 Q. Yes.

6 A. Yes.

7 Q. Did you sign any documents pertaining to receipt
8 of title insurance?

9 A. Yes. I'm sure we did.

10 Q. Any other documents that you signed?

11 A. We signed everything that we were asked to sign.

12 Q. But do you recall what any of those documents
13 were?

14 A. I do not.

15 Q. Did you receive any documents?

16 A. Yes, we did.

17 Q. What documents, ma'am?

18 A. All of the documents pertaining to that purchase.

19 Q. Such as?

20 A. Such as closing statements, warrantee deed
21 insurance, everything that was pertinent to the
22 transaction.

23 Q. Do you have a copy of all those documents
24 maintained in a file?

25 A. Yes, I do.

1 Q. Did you keep all of those documents as they were
2 received by you at time of closing?

3 A. Yes, I did.

4 Q. Where is that file located, ma'am?

5 A. In my house.

6 Q. The one here locally?

7 A. In Coyote Springs.

8 Q. Do you recall receiving a Declaration of
9 Restrictions?

10 A. I did not receive that.

11 Q. How do you know, ma'am?

12 A. Because I have been asked about that since then
13 and I have looked through those papers and have not
14 found any evidence of that.

15 Q. After you purchased the Coyote Springs property,
16 what did you do with it?

17 A. We started making payments on it.

18 Q. Okay. In terms of developing the property for
19 use, what did you do first?

20 A. In the beginning, it was about -- It was not
21 until August of 2000 that we drilled our water well.

22 Q. Was that the first thing that you did?

23 A. Yes, it is. I believe electricity was put in
24 about the same time.

25 Q. Between the time of purchase of the property in

1 April of 1998 until August of 2000, you made no
2 improvements or changes to the land?

3 A. That's correct.

4 Q. Was there a road on the land?

5 A. You might call it that.

6 Q. Describe it for me. What would you call it?

7 A. It was an obstacle course.

8 Q. Did you view the land prior to purchase?

9 A. Yes, we did.

10 Q. Did you physically go on the land?

11 A. Yes, we did.

12 Q. How did you get there?

13 A. Over the Coyote Springs Road.

14 Q. Okay. Did you go over this road onto another
15 road onto the property?

16 A. No. You can go right from Coyote Springs Road
17 onto our property.

18 Q. Did you do anything to change the road as
19 originally on the land or at the time that you received
20 it in '98 or the time you purchased it in '98 to
21 present?

22 A. No. We did nothing to the road.

23 Q. So the road is essentially in the same condition
24 now as it was then?

25 A. No. The road has been paved and I have here a

1 letter from --

2 Q. Just for clarity sake, ma'am, the road that I'm
3 referring to is any road actually on the property you
4 purchased. Not any access road to the property.

5 A. There was no road --

6 MR. ADAMS: Actually, I object to the
7 question on the basis I prefer you refer to it as a
8 driveway or a road.

9 Q. (Continued by MS. KIRK:) That's fine. We can
10 use the word driveway. Okay. At the time that you
11 purchased the property at Coyote Springs, was there a
12 driveway on the land?

13 A. No.

14 Q. Did you ever construct a driveway on the land?

15 A. We did.

16 Q. Do you recall when?

17 A. Sometime in the year 2000, because we set our
18 mobile home on the property in August of 2000.

19 Q. Ma'am, I note that in responding to my questions
20 concerning your improvements to the land you are
21 referring to a piece of paper that has a list on it,
22 typed list of some nature; is that correct?

23 A. No. I was looking for a letter from the road
24 department as to when they put in -- when they paved the
25 road. Because knowing when they paved the road, I can

1 tell you when I went to see Mr. Launderers.

2 Q. Okay. When you say paved the road, are you
3 talking about an access road to the driveway to your
4 property?

5 A. It is the main road that you have to take
6 entering Coyote Springs Ranch.

7 Q. Do you know the name of that road?

8 A. Coyote Springs Road.

9 Q. Okay. Ma'am, what is the document that you are
10 looking at that is in front of you?

11 A. This is the chronological order of things that we
12 did on the property.

13 Q. When did you prepare that document?

14 A. Yesterday.

15 Q. Any objection to my looking at it?

16 A. No.

17 Q. Any objection of my having a copy of this?

18 A. Not at all.

19 Q. Okay. Were you still looking for another
20 document?

21 A. Well as I said, I had a letter from the road
22 department helping me to determine when the road was
23 paved because I did -- My husband and I did visit Mr.
24 Launderers about our project. I just knew that you were
25 going to ask me when we went to see him and it was

1 before the road was paved.

2 Q. Why did you go see Mr. Lauanders? You said it was
3 about your property?

4 A. Mr. Lauanders is a property owner in Coyote
5 Springs. Yavapai County Planning Department had come to
6 the property to talk to us about our project in Coyote
7 Springs. They suggested that I talk to Mr. Lauanders
8 about our plans.

9 Q. Okay. By project, you are referring to growing
10 trees on the property?

11 A. Yes.

12 Q. And why did Yavapai County Planning Department
13 suggest that you go see Bob Lauanders?

14 MR. ADAMS: Object to the form of the
15 question.

16 Q. (Continued by MS. KIRK:) Let's back up. You
17 told me that Yavapai County Planning Department came to
18 your property concerning your project?

19 A. Yes.

20 Q. Do you recall when they came to your property?

21 A. They came when there was nothing on that
22 property.

23 Q. Do you recall month and year?

24 A. It would have been in 2001.

25 Q. 2001?

1 A. Yes.

2 Q. Why did they come to your property? Did you call
3 them?

4 A. I did not.

5 Q. Okay. Why did they come to your property?

6 A. I really don't know.

7 Q. Who was it from the planning department that
8 came? Do you recall?

9 A. It was Doug Reynolds.

10 Q. Did Mr. Reynolds make an appointment with you
11 prior to coming?

12 A. I don't think so.

13 Q. Did Mr. Reynolds contact you in any way prior to
14 coming to your property?

15 A. I don't think so.

16 Q. When Mr. Reynolds came to your property, did he
17 tell you why he was there?

18 A. I believe one of the neighbors had called the
19 planning department.

20 Q. Do you know which neighbor? Did he say?

21 A. No. He did not say.

22 Q. So that is just your guess that somebody called,
23 a neighbor called the planning department?

24 A. He may have said that.

25 Q. You just don't recall one way or the other?

1 A. I don't know why else he would have come. We had
2 nothing on the property, nothing.

3 Q. You said that he came in 2001?

4 A. Yes.

5 Q. And you had at that time or by that time in
6 August 2000, you had moved a mobile home onto the
7 property; correct?

8 A. That's true.

9 Q. So when you say there was nothing on the
10 property, what do you mean by nothing?

11 A. Nothing other than our mobile home.

12 Q. Okay. In other words, no trees, box trees,
13 shrubs, that sort of thing; correct?

14 A. Right.

15 Q. And you don't know why Mr. Reynolds came to your
16 property?

17 A. I believe it was because of neighbors calling, a
18 neighbor calling.

19 Q. What did Mr. Reynolds say to you?

20 A. He suggested that we go to see Mr. Launder who
21 owned property in the area, and that was after we talked
22 to him about our plan to grow trees on the property.

23 Q. I'm sorry, who did you speak to about growing
24 trees on the property? You said after you spoke with
25 him about growing trees on the property. To whom are

1 you referring, Mr. Reynolds or Mr. Launders?

2 A. We spoke to Mr. Reynolds. He suggested that we
3 go to see Mr. Launders.

4 Q. Okay. Did Mr. Reynolds say anything else to you
5 at that time?

6 A. He mentioned something about CC&R's.

7 Q. Do you remember what in particular that he
8 mentioned about that?

9 A. Just that they were -- just that they had CC&R's
10 in that area.

11 Q. Did he tell you anything in particular about
12 those CC&R's? Specifically, what they did allow or what
13 they didn't allow?

14 MR. ADAMS: Object to the form.

15 THE WITNESS: I don't remember.

16 Q. (Continued by MS. KIRK:) When he told you about
17 the CC&R's, did you ask him any questions about the
18 CC&R's?

19 A. I don't think so.

20 Q. Who else was present, do you recall?

21 A. My husband.

22 Q. Anybody else?

23 A. No.

24 Q. Did you know what CC&R's were at that time?

25 A. I did not.

1 Q. But you didn't ask Mr. Reynolds what a CC&R was?

2 A. He simply suggested that we go to see this lawyer
3 that lived in the area. He said he would know all about
4 it.

5 Q. Did you go see Mr. Launderers?

6 A. We did.

7 Q. Did you see him because he was a neighbor?

8 A. No.

9 Q. Why did you see him then?

10 A. Because Mr. Reynolds suggested that we go see
11 him.

12 Q. Okay. When you saw Mr. Launderers because Mr.
13 Reynolds told you to, or suggested that you do that,
14 what was your purpose? Was it because --

15 A. I don't think we were sure at the time. We only
16 went because he asked us to go see him.

17 Q. What did you say to Mr. Launderers?

18 A. We talked to him about our plans to grow nursery
19 product on that property in Coyote Springs. He said he
20 would not want a nursery next to him, but he said that
21 if our neighbors didn't mind, he didn't think we would
22 have a problem. Then he mentioned these CC&R's. At
23 some point in the meeting, he looked in his filing
24 cabinet for a copy of them but could not find them.

25 During that meeting, I asked him what he thought

1 about the racing stables in the area and he said what
2 racing stables. Now I was really surprised at that
3 answer from him because everyone in Coyote Springs knows
4 of the existence of the racing stables. I said surely
5 you know of those racing stables and he said no. I'm
6 too busy dodging the potholes in the road and that is
7 why I keep trying to find out when they paved the road
8 and I would know when I went to see Mr. Launderers.

9 Q. When you say racing stables in the area were
10 mentioned during your conversation with Mr. Launderers,
11 were you referring to Weir Racing Stables?

12 A. Yes, I was.

13 Q. Were you referring to any other racing stables in
14 the area?

15 A. No. Not at that time. There are many others in
16 there, but not at that time with him.

17 Q. How many are in the area, racing stables?

18 A. I'm not sure. There is Jennings Racing Stables.
19 There is the Uncle Barry's Racing Stables. There is the
20 Double Eagle Breeding Stables. There is the first
21 property upon entering Coyote Springs to the right
22 houses racing horses, but I don't know the name of that.

23 Q. Is it your contention that all these racing
24 stables are all businesses?

25 A. It is.

1 Q. And that is because why?

2 A. Because they house and train race horses for
3 profit.

4 Q. And the profit is from racing the horses?

5 A. Yes, or buying and selling them.

6 Q. Do you know personally any of the owners of these
7 stables that you testified about; Jennings Racing
8 Stables, Double Eagle?

9 A. I've talked to them.

10 Q. Okay. Do you know them?

11 A. To know them --

12 Q. Are you personal acquaintances with them?

13 A. No. Not at all.

14 Q. Do you know anything about the operation of their
15 stables?

16 A. Their operations are pretty much the same. They
17 all house and train the horses and buy and sell them.

18 Q. Okay. On what basis or what personal knowledge
19 do you have that any of the stables buy and sell horses?

20 A. I have not personally purchased any. I don't
21 know of anyone that has purchased or sold a horse to the
22 different stables. No.

23 Q. So when you said they are buying and selling
24 horses, you have no personal knowledge that that is
25 actually occurring at these stables?

1 A. It is conjecture on my part.

2 Q. Is it also conjecture on your part that they are
3 training horses for a profit?

4 A. No.

5 Q. On what personal facts or what personal knowledge
6 do you have of facts that any of these stables in the
7 area are training horses for profit?

8 A. I can see that.

9 Q. Okay. Do you know who owns any of the horses
10 that are on those properties, those racing stables?

11 A. Do I know the people that own them?

12 Q. Do you know whether the horses that are at these
13 stables are owned by any person other than the owner of
14 the land?

15 A. I don't know that.

16 Q. After you drilled the well in August of 2000, you
17 then set up your mobile home; is that correct?

18 A. That's correct.

19 Q. Is that mobile home still there, ma'am?

20 MR. ADAMS: Counsel, if you are going to use
21 my client's note, I prefer that you give her a copy of
22 them.

23 Q. (Continued by MS. KIRK:) Sure. I can give her
24 -- Can you not testify without referring to this list
25 about developments made on the land?

1 A. I probably can.

2 Q. While that is being copied, let's continue with
3 some questions then. Is the mobile home still there?

4 A. Yes, it is.

5 Q. Is there any other house there on the land?

6 A. There are no other houses there.

7 Q. Are there any other structures where someone
8 could live on the land?

9 A. There are not.

10 Q. So just a mobile home is the only residential
11 structure on the property?

12 A. It is.

13 Q. Any offices?

14 A. There are no offices, because there is no
15 business conducted on that property.

16 Q. Okay. Garages? Sheds?

17 A. No garages.

18 Q. Sheds?

19 A. There is a pump house.

20 Q. Okay. And what does the pump house consist of?

21 A. It is there for the operation of the well. I'm
22 not sure what is in that pump house other than a pump.

23 Q. Who is currently living in the mobile home,
24 ma'am?

25 A. Mr. Cox and myself.

1 Q. How many acres do have you on the Coyote Springs
2 property?

3 A. Twenty acres.

4 Q. Any corrals?

5 A. We have a corral for our two horses.

6 Q. Any other area structures for the horses? Barn?

7 A. There is a tack room.

8 Q. Do you have a barn?

9 A. No. We do not.

10 Q. So in terms of structures you have the mobile
11 home; correct?

12 A. Yes.

13 Q. Is that affixed to the land?

14 A. It is not.

15 Q. So that is something that can be moved at any
16 time; is that correct?

17 A. That's correct.

18 Q. And you have the pump house?

19 A. Yes.

20 Q. Or pump room?

21 A. Uh-huh. Pump house.

22 Q. And a tack room?

23 A. A tack room.

24 Q. No barns? Sheds? Storage areas? Nothing like
25 that? Is that correct?

1 A. That's correct.

2 Q. Going down this list you note that a fence was
3 installed May of 2001. What is the purpose of that
4 fence, ma'am? Is that a perimeter fence?

5 A. It is a perimeter fence.

6 Q. What type of fence is it? Is it wood?

7 A. Wire. It is a wire fence.

8 Q. Wire fence. Okay. You indicated here that the
9 property was graded September through November of 2001.
10 What was the property graded for?

11 A. Property was graded because it slopes from the
12 east end to the west end twenty feet. And before that
13 was graded, any rain water would stand in the road and
14 cause tremendous potholes. We graded the property
15 simply to get it flat and that would allow us to keep
16 our trees in containers on a flat piece of land.

17 Q. How many acres were graded? Do you know?

18 A. Ten acres were graded.

19 Q. You next note on your list, first production of
20 trees January of 2002?

21 A. Yes.

22 Q. What are you referring to, ma'am?

23 A. Those are bare root trees.

24 Q. So first production of trees, why did you use the
25 term production?

1 A. Because we are producing those trees.

2 Q. Then you also have in here, February of 2002
3 start of irrigation lines. What do you mean by that?

4 A. Bare root trees are potted up and not watered for
5 months. They just sit in their containers without being
6 watered. At some point in time, that is usually when
7 they start to leaf out. The first sign of leaving out
8 means that they will need water. So irrigation lines
9 were put in the ground in preparation for the trees
10 needing water.

11 Q. The irrigation lines that you put in the ground
12 in February of 2002, how many trees could they sustain
13 or be irrigated from that?

14 A. I really can't say, because we put those lines in
15 periodically during the year.

16 Q. Throughout 2002?

17 A. No. Yes. There was just like a section at a
18 time where you would irrigate or prepare to irrigate a
19 section at a time.

20 Q. How many times have you installed or otherwise
21 increased the amount of irrigation lines that you have
22 had since February of 2002?

23 A. I honestly don't know.

24 Q. Currently, as of today, the irrigation lines that
25 you have in place on the property, how many trees can

1 that sustain?

2 A. I don't know. The lines cover about nine acres.

3 Q. And the lines, you have been building them since
4 2002 to present?

5 A. They were all installed by -- I would say that
6 they were all installed by the end of March because we
7 planted these perimeter trees and they had to be on drip
8 lines.

9 Q. So the irrigation lines that were on the property
10 as of March of 2002 are substantially the same as what
11 is on the property right now?

12 A. Yes, they are.

13 Q. Are these above ground irrigation lines?

14 A. No. They are in the ground, but then little
15 spaghetti lines come out of them and are placed in the
16 container.

17 Q. How many spaghetti lines are there?

18 A. As many as the trees that we have there.

19 Q. What is the most number of trees that you have
20 had on the property?

21 A. I honestly don't know. I've never counted them.

22 Q. Do you keep records of what excess inventory you
23 keep on the property?

24 A. Yes, we do.

25 Q. Where are those records?

- 1 A. In the office.
- 2 Q. Which office, ma'am?
- 3 A. The office on Viewpoint.
- 4 Q. Who maintains those records?
- 5 A. Normally the foreman of the yard.
- 6 Q. Do you ever maintain those?
- 7 A. No.
- 8 Q. Your husband?
- 9 A. No. I said it's the foreman of the yard. His
10 name is Dusty.
- 11 Q. What is Dusty's last name?
- 12 A. Eiker, E-I-K-E-R.
- 13 Q. How long has he worked for you?
- 14 A. Over two years. No. Let me see here. He
15 started -- Yes. He started in January of 2002. So he
16 has been with us almost two and a half years.
- 17 Q. Has he worked at the Coyote Springs property?
- 18 A. Yes.
- 19 Q. Throughout that time?
- 20 A. Yes.
- 21 Q. Is that a full-time position for him?
- 22 A. Yes.
- 23 Q. What does he do?
- 24 A. He was in charge of installing the water lines
25 and he is in charge of all the trees, taking care of

1 them.

2 Q. Does he have any help?

3 A. He has two helpers, maybe three.

4 Q. And those people assist him with maintaining the
5 trees?

6 A. Yes, they do.

7 Q. Are those full-time employees, those two or three
8 people?

9 A. Yes, they are.

10 Q. Do they always work at the Coyote Springs
11 property?

12 A. Yes, they do.

13 Q. Any other employees at the Coyote Springs
14 property?

15 A. No.

16 Q. The two or three additional helpers that Dusty
17 has, how long have they been working at the Coyote
18 Springs property?

19 A. I don't really know.

20 Q. Okay. Do you keep employment records?

21 A. Yes.

22 Q. For those individuals?

23 A. We do.

24 Q. Have you ever had part-time, seasonal help?

25 A. Occasionally we do.

1 Q. Do you keep employment records on those
2 individuals?

3 A. Yes, I do.

4 Q. Do you maintain those records, ma'am?

5 A. Yes, I do.

6 Q. Where are they maintained?

7 A. In the office on Viewpoint Drive.

8 Q. Going back to the conversation that you had with
9 Bob Lauenders, you had testified, I believe, that you
10 told him what your project for the property was;
11 correct?

12 A. Yes, I did.

13 Q. And he responded to you I wouldn't want a nursery
14 beside me or beside my property?

15 A. Next to me, he said.

16 Q. Next to me?

17 A. Uh-huh.

18 Q. Why do you think he used the term nursery to
19 describe your project?

20 A. We made --

21 MR. ADAMS: Object to the form of the
22 question.

23 Q. (Continued by MS. KIRK:) That's fine. You can
24 answer the question.

25 A. We may have referred to it as a nursery. It was

1 always intended to be a growing yard and it always has
2 been. No sales or business transactions have ever taken
3 place there.

4 Q. When you say no sales or business transactions
5 have taken place at the Coyote Springs property, is that
6 because the trees that are there are not paid for by
7 Prescott Valley Growers when moved to the wholesale
8 location or retail location?

9 MR. ADAMS: Object to the form.

10 Q. (Continued by MS. KIRK:) Okay. Let me back up.
11 When I had asked you about your partnership earlier and
12 you said it was with your son -- pardon me -- with your
13 two sons and your husband?

14 A. Yes.

15 Q. And I asked you what were the assets of that
16 partnership. Do you recall that question? Well do you
17 recall your answer was it was just the Coyote Springs
18 property?

19 A. I didn't say that.

20 Q. Okay. If I misspoke, I apologize. The Coyote --
21 The partnership that you have, what are the assets of
22 that partnership?

23 A. I really don't understand what you mean here.

24 Q. Okay. Do you understand what an asset is when I
25 use that term?

1 A. I hope so.

2 Q. Okay. The partnership that you have with your
3 husband and your two sons, that partnership has assets;
4 correct?

5 A. Yes.

6 Q. And those assets consist of the land in Coyote
7 Springs; correct?

8 A. That property is in my husband and my name.

9 Q. Okay.

10 A. Not my sons.

11 Q. Okay. What are the assets of the partnership
12 then?

13 A. Well, it should be the inventory.

14 Q. Okay. So the trees on Coyote Springs property?

15 MR. ADAMS: Object to the form.

16 THE WITNESS: At some point in time, those
17 trees will be assets but they aren't as such because
18 they are aren't saleable.

19 Q. (Continued by MS. KIRK:) So when you say
20 inventory, what are you referring to?

21 A. The product that is ready to sell.

22 Q. So it has to be in a condition that it could be
23 sold to the public?

24 A. Or to wholesalers. It has to be rooted and a
25 certain size. For instance, a fifteen-gallon-size

1 bucket with a tree in it has to have at least one inch
2 in caliber before it can be sold. Those are rules that
3 are -- Those are rules of the Arizona Nursery
4 Association. Certain size containers have to have
5 certain size product in them.

6 Q. Do you operate under the rules of the Arizona
7 Nursery Association?

8 A. We are members of the Arizona Nursery Association
9 and we have to abide by the rules of the Department of
10 Agriculture.

11 Q. Do your income tax returns reflect the
12 partnership that you have with your husband and your
13 sons?

14 A. Yes, they do.

15 Q. Do you have copies of those income tax returns
16 for the last five years?

17 A. I probably do.

18 Q. If you didn't, would your accountant, if you had
19 an accountant?

20 A. I have an accountant.

21 Q. Would that individual have those records?

22 A. If I don't have them, he does.

23 Q. And who is your accountant, ma'am?

24 A. His name is Steven Stein.

25 Q. Is he local?

1 A. He is located in Phoenix, Arizona.

2 Q. Who are your neighbors at the Coyote Springs
3 property?

4 A. The property to the south of us is occupied by
5 the Living Faith Church.

6 Q. Okay.

7 A. The property to the north of us is owned by Wendy
8 Chagnose.

9 Q. Any other neighbors?

10 A. The property to the east of us is state land and
11 the property across Coyote Springs Road is owned by Mr.
12 Sanders.

13 Q. Is that Dan Sanders?

14 A. That's Dan Sanders.

15 Q. Has Mr. Sanders ever complained to you about how
16 you use your property in Coyote Springs?

17 A. I spoke to Mr. Sanders at one point in time.

18 Q. Do you recall when you spoke to him?

19 A. No, I don't.

20 Q. Not even the year?

21 A. Not even the year.

22 Q. What was your discussion about?

23 A. I believe he called to ask me about our property.
24 He wondered about our water use. He said that we were
25 going to devalue his property and his property was all

1 he owned in the whole wide world and he said that he had
2 purchased his property to subdivide it. That was his
3 intention, to divide it into five equal parcels and rent
4 them out for his retirement.

5 Q. Has he done so?

6 A. He has not done so.

7 Q. When he said that -- When he said to you that
8 your conduct on the land was devaluing his property, did
9 he say to you what he meant by that?

10 A. No. I simply responded by telling him that the
11 property in the area just keeps going up in value.

12 Q. What was his concern about your water usage if
13 you are on your own well?

14 A. Mr. Sanders has great concerns about water. But
15 since I've talked to him, he just recently planted trees
16 all around the outside perimeter of his own property.

17 Q. Do you know how many trees?

18 A. I haven't counted them.

19 Q. Do you think it is as many as the 800 you've
20 planted?

21 A. Well, it will be close. It will be half of that
22 when he finishes planting around his entire property.
23 It will probably be about 400. He has ten acres.

24 Q. Do you know how many are there right now?

25 A. I really don't know.

1 Q. What did you respond to Mr. Sanders about your
2 water usage?

3 A. I don't remember.

4 Q. Did you have any response to him about
5 devaluation of the property, of his property?

6 A. Yes. I told him that the property continued to
7 go up in value. I did tell him that our well -- our
8 water well pumped thirty-five gallons of water a minute
9 and that is what everyone can do. That is what is
10 allowed of everyone, thirty-five gallons per minute,
11 twenty-four hours a day.

12 Q. When you say that is allowed of everyone, who?

13 A. That has a water well.

14 Q. Who is it that allows that?

15 A. The Arizona Department of Water Resources.

16 Q. Have you obtained some form of license or permit
17 from the Arizona Department of Water Resources for that
18 usage?

19 A. Absolutely.

20 Q. When?

21 A. When we drilled the well.

22 Q. Do they monitor your water usage?

23 A. They can.

24 Q. Do you monitor the water usage?

25 A. We do.

1 Q. How do you do that?

2 A. We have a meter on the well.

3 Q. Describe for me the process you use to meter or
4 monitor your water usage?

5 A. This is not my department.

6 Q. Whose department is it, ma'am?

7 A. My son could explain the use of the water well.

8 Q. Which son?

9 A. Jimmy could.

10 Q. Anybody else?

11 A. Dusty is in charge of the well on that property.

12 Q. Do you know a neighbor by the surname of James?

13 A. I have never met Mr. James. My husband has.

14 Q. Okay. Do you know whereabouts Mr. James'
15 property is located?

16 A. Yes, I do.

17 Q. Could you tell me where that is?

18 A. It is north of us, approximately two or three
19 parcels on the other side of Coyote Springs Road.

20 Q. Okay. Do you consider a church a business?

21 A. Yes, I do.

22 Q. Why? Where is the profit?

23 A. Probably depends on the church.

24 Q. So not all churches are businesses?

25 A. No. I think they are all businesses.

1 MR. ADAMS: Object to the form of the
2 question.

3 Q. (Continued by MS. KIRK:) Your attorney was
4 talking when you were speaking.

5 A. I think they are all businesses. I just don't
6 know how they disperse of the money that they take in.

7 Q. And why is it that churches are businesses,
8 because they take in money?

9 MR. ADAMS: Object to the form.

10 THE WITNESS: The pastor who runs that
11 church has to have an income provided to him to do what
12 he does there.

13 Q. (Continued by MS. KIRK:) Okay. Are you
14 referring to the church in Coyote Springs?

15 A. That one and a lot of other churches.

16 Q. Why is it that you think that the church in
17 Coyote Springs is a business?

18 A. They operate for a profit.

19 Q. And how do you know that? What personal
20 knowledge do you have that the church in Coyote Springs
21 operates for a profit?

22 A. I don't have personal knowledge of that. I
23 thought it was an understood -- something.

24 Q. What if it is a nonprofit church? Is it then
25 still a business to you?

1 A. I don't know.

2 Q. If somebody is self-employed and they have an
3 area in their home -- this is a hypothetical -- They
4 have an office in their home and they take calls from
5 people, for whatever their business is, but they don't
6 do any actual work at the house. They go out and do the
7 work. Are they, in your opinion, operating a business?

8 A. I don't know.

9 Q. At their home?

10 A. I've wondered about that.

11 Q. Okay. And what have you wondered?

12 MR. ADAMS: Object to the form.

13 THE WITNESS: It is a gray area, as far as I
14 am concerned.

15 Q. (Continued by MS. KIRK:) Okay. At what point,
16 in your opinion, what particular criteria or factors
17 would make it a business operating out of a home?

18 A. I think you are asking me how do you identify
19 businesses in Coyote Springs.

20 Q. No. I'm asking you generally -- No. Let's use
21 your question. How do you identify businesses in Coyote
22 Springs? What is your criteria?

23 A. How is the property used. Some of them are used
24 agriculturally. In my opinion, they are agricultural
25 businesses. There are independent contractors that

1 drive huge semi trucks as an independent contractor, but
2 park that vehicle on their property in Coyote Springs.
3 I consider them to be businesses. There are other
4 nurseries in Coyote Springs.

5 There is a Christmas tree farm that advertises
6 Christmas trees for sale at Christmas time. You can go
7 there and cut your own tree and pay for it on that
8 property. I have talked to the lady that owns that
9 property. There is another nursery out there that
10 advertises in the phone book and the newspaper. You can
11 go to that property and buy barrels, for one thing, half
12 barrels to plant plants in. How do I identify
13 businesses in Coyote Springs?

14 Q. Can I ask you another question?

15 A. Okay.

16 Q. How would you identify a business operation in
17 general terms?

18 A. One that buys and sells on the property. A
19 business would be to me where you buy and sell on that
20 property. That to me is considered commerce and we
21 don't do that in Coyote Springs. We have no commerce,
22 no business.

23 Q. So if you are going back to my hypothetical about
24 the self-employed person, about the office space in his
25 home, but he does all his business at his customers, is

1 he engaged in business as to your definition?

2 A. If he just has an office in the home?

3 Q. Yes.

4 A. I said that is a gray area for me.

5 Q. Okay. Your definition of business then turns
6 about where the person is conducting the business,
7 whether it is on their property or at some other
8 property that they don't own?

9 MR. ADAMS: I'm going to object to the form
10 of the question.

11 THE WITNESS: I don't think I said that.

12 Q. (Continued by MS. KIRK:) Is a business something
13 that operates for profit?

14 A. I think so.

15 Q. Does a business --

16 A. Unless it is a nonprofit business.

17 Q. Okay. Profit then is a criteria for business,
18 correct, in your view?

19 A. I believe so.

20 Q. Okay. Does it matter where the business is
21 conducted?

22 A. I certainly think so.

23 Q. Okay. When you were testifying earlier about
24 people that are independent contractors and they have
25 their trucks parked in their yard, why is that a

1 business?

2 A. Because you couldn't do that on a residential
3 property. You wouldn't be able to park a semi truck on
4 residential property, so you are operating your business
5 on your property when you bring that truck home every
6 night.

7 Q. Okay. What about the trees that you have on your
8 property in Coyote Springs that you later sell?

9 A. Yes. What about them?

10 Q. Why is that, or how is that in any way different
11 from the person that drives their semi home and parks it
12 on their property?

13 A. Why is it different? Because we take those trees
14 to another property to do business with. We don't do
15 the business on that property. The trees are there.

16 Q. And that is part of your business then, those
17 trees?

18 MR. ADAMS: Objection.

19 Q. (Continued by MS. KIRK:) You called it
20 inventory; correct?

21 A. That's correct.

22 Q. And you grew them for a profit; correct?

23 A. That's true.

24 MS. KIRK: At this time, do you have any
25 objection to my having these marked as exhibits?

1 MR. ADAMS: Actually, the notes I--am going
2 to object to your use of them. They are work product.

3 MS. KIRK: They are not your work product.
4 They are her work product.

5 MR. ADAMS: They are our attorney client
6 work product.

7 MS. KIRK: She had no objection giving me a
8 copy.

9 MR. ADAMS: You wanted to see it. We have
10 shown it to you. They are privileged.

11 MS. KIRK: By giving it to me, you waived
12 any privilege.

13 MR. ADAMS: We haven't waived it just
14 because you've seen it.

15 MS. KIRK: By letting me see it, you have
16 waived it.

17 MR. ADAMS: You wanted to see what she was
18 looking at as she was answering your questions. We
19 showed them to you.

20 MS. KIRK: She said she generated them.

21 MR. ADAMS: For me. Let's get the judge on
22 the line. Call him.

23 MS. KIRK: I don't have a problem reserving
24 it for a later debate. I don't want to take up the
25 judge's time for this.

1 MR. ADAMS: You are not going to keep it.

2 MS. KIRK: I don't have a problem not
3 keeping it, but I will reserve it and bring it up at a
4 later time. I want a copy of it for purposes of
5 attaching it to my exhibits.

6 MR. ADAMS: We will leave with that.

7 MS. KIRK: You will what?

8 MR. ADAMS: We'll leave with that copy.

9 MS. KIRK: I will reserve the right.

10 MR. ADAMS: You can bring it up later.

11 Q. (Continued by MS. KIRK:) The document that your
12 attorney and I are having an argument about, you have
13 that right in front of you; correct?

14 A. Yes, I do.

15 Q. What is the title?

16 MR. ADAMS: I'm going to object. Don't
17 answer the question. We are not going to answer any
18 questions about this. It is as to privilege.

19 MS. KIRK: What is the --

20 MR. ADAMS: There is no --

21 MS. KIRK: What privilege?

22 MR. ADAMS: It is work product.

23 MS. KIRK: It is not your work product.

24 MR. ADAMS: It is ours. It was prepared by
25 me and her in contemplation of this deposition. That,

1 by definition, is work product.

2 MS. KIRK: You waived it by giving it to me.

3 MR. ADAMS: You wanted to see it. As a
4 courtesy, we --

5 MS. KIRK: That was the time --

6 MR. ADAMS: We gave it to you as a courtesy
7 while she was looking at it.

8 MS. KIRK: That was the time to waive any
9 objection.

10 MR. ADAMS: That is not prepared --

11 MS. KIRK: Did you prepare this document,
12 Jeff?

13 MR. ADAMS: It was prepared in contemplation
14 with this.

15 MS. KIRK: Yes or no? It is a simple
16 question.

17 MR. ADAMS: No. But I'm not in the
18 deposition today.

19 MS. KIRK: No. You are not. If this was
20 prepared by her, it is not attorney client work product.

21 MR. ADAMS: The document was prepared
22 pursuant to me and --

23 MS. KIRK: They couldn't --

24 MR. ADAMS: If you want us to disclose that,
25 bring it up, file a motion to compel with the judge.

1 MS. KIRK: I'm going to see if we can't get
2 a judge. Who is our judge? Mackey?

3 MR. ADAMS: Uh-huh.

4 MS. KIRK: Let's see if we can get him on
5 line for 1:00. It is five to 12:00 right now.

6 MR. ADAMS: That's fine.

7 MS. KIRK: Take a break.

8 (Whereupon, a brief recess was had.)

9 MS. KIRK: What about this document? The
10 Yavapai County Agricultural Guidelines?

11 MR. ADAMS: We have no problem. That is a
12 public record.

13 MS. KIRK: I want it marked as an exhibit.
14 Could I have this as one to her depo. And her copy of
15 the Agricultural Land Use Application, any objection as
16 it being attached as an exhibit?

17 MR. ADAMS: No.

18 MS. KIRK: This will be two.

19 MR. ADAMS: Why don't we go ahead and break
20 for lunch then.

21 Q. (Continued by MS. KIRK:) I want to ask her
22 another question before we do. Just one other question
23 before we lose our train of thought. I am going to
24 leave that here.

25 What else or what other structures of any nature

1 or type or form are on the property currently?

2 (Brief interruption.)

3 THE WITNESS: I have a mobile home on the
4 property -- excuse me. My motor home is on that
5 property and my son Alan has his motor home there for a
6 short time. That is all the structures that are on
7 there other than the water tank.

8 Q. (Continued by MS. KIRK:) Is the water tank above
9 ground?

10 A. Yes, it is.

11 Q. How large is the water tank? How many gallons of
12 water does it hold?

13 A. I should know that. I really don't know.

14 Q. Are there any facilities that your employees use
15 for bathroom breaks?

16 A. There is a J-John on the property.

17 Q. Okay. Anything else that they have access to,
18 where they can eat their lunch or take a break?

19 A. There is a shed.

20 Q. Is that where they eat lunch?

21 A. They eat in their cars.

22 Q. Okay. Do any of your --

23 (Brief interruption.)

24 Q. (Continued by MS. KIRK:) Do any of your
25 employees at any time, have they ever lived on the

1 property?

2 A. At one time Dusty was in a travel trailer on that
3 property for two or three months, I think. That was
4 while he was getting a divorce.

5 Q. Is that why he was on the property, because he
6 was getting a divorce? Do you know?

7 A. Yes.

8 Q. And do you recall when that was, approximate
9 year?

10 A. It was in 2002.

11 MS. KIRK: Okay. We'll take a break for
12 lunch.

13 (Whereupon, deposition exhibits one through three are
14 marked.)

15 (Whereupon, a recess was taken from 11:52 a.m. to
16 1:13 p.m., at which time a lunch break was had.)

17 Q. (Continued by MS. KIRK:) During the lunch hour
18 break, ma'am, did you review any documents?

19 A. I did not.

20 Q. When was the first time that you ever saw the
21 Declarations of Restrictions that pertained to the
22 Coyote Springs Ranch Subdivision?

23 A. Sometime in 2001.

24 Q. Do you recall who provided those to you?

25 A. Waneta Offerman, the realtor.

1 Q. And why did she provide those to you?

2 A. We had been to see Mr. Launderers. He wanted to
3 give us a copy of them but could not find them. So
4 after that meeting, I called Ms. Offerman to get them
5 for me.

6 Q. Did you review them?

7 A. Yes, I did.

8 Q. At the time that Waneta Offerman showed you the
9 property in 1998, before you bought it, did she ever
10 tell you about the CC&R's?

11 A. She did not.

12 Q. Did you ever ask if the property was subject to
13 any restrictions as to use?

14 A. I did not.

15 Q. At the time that you purchased the property or
16 just before you purchased the property, could you
17 describe for me the character of the area of that Coyote
18 Springs Ranch Subdivision?

19 MR. ADAMS: Object to form.

20 THE WITNESS: We drove around the area and
21 saw evidence of many types of activities that were not
22 residential. It looked like a do-your-own-thing area.

23 Q. (Continued by MS. KIRK:) Okay. Based upon or
24 using a percentage, how many or what percentage of homes
25 -- pardon me -- What percentage of lots in the



1 subdivision were used for residential purposes?

2 MR. ADAMS: Object to form.

3 THE WITNESS: I don't know.

4 Q. (Continued by MS. KIRK:) Okay. What businesses
5 did you see, aside from the stables that you already
6 told me about?

7 A. I saw a tree farm.

8 Q. Is that the Christmas tree farm you testified
9 about?

10 A. Yes. I saw a llama farm. I saw an alpaca farm.
11 I saw a yard full of commercial vehicles that are still
12 there and were there six years ago. I saw a lot of
13 junkyards. I saw a horse breeding facility. I saw hay
14 sales. That is some of what we saw then.

15 Q. The commercial vehicles that you referred to, did
16 they have any insignia on them? Signs?

17 A. I don't know. They are large vans.

18 Q. The junkyards, are they open to the public?

19 A. Pardon?

20 Q. You said that you saw some junkyards in the
21 subdivision, are those open to the public?

22 A. One of them is open. The others are just -- They
23 are not what you would consider businesses. They were
24 just --

25 Q. Messy?

1 A. Junkyards on private property.

2 Q. Meaning they were messy, they were not open to
3 the public, they are just --

4 MR. ADAMS: Object to the form.

5 Q. (Continued by MS. KIRK:) What do you mean when
6 you say they are junkyards but they are not businesses?

7 A. I mean they are abandoned cars on property,
8 abandoned boats. Just plain junk.

9 Q. The junkyard that is open to the public, where is
10 that located?

11 A. That is on the northern most parcel of Coyote
12 Springs. It is now for sale.

13 Q. Is there a business sign or a sign?

14 A. No, there isn't.

15 Q. How do you know it is open to the public?

16 A. You see about forty abandoned or used cars on the
17 property. If you are looking for -- Actually, it is a
18 known thing in the area. People know that if you go
19 over to so and so's place, he might have a part that you
20 need for your vehicle.

21 Q. Do you know if he advertises?

22 A. I don't know that.

23 Q. The hay sales, you said some place is involved in
24 hay sales?

25 A. Uh-huh.

1 Q. How do you know?

2 A. They just had -- let's see, what do you call
3 it -- a huge storage area or a huge amount of hay
4 stored, with a tarp over it.

5 Q. Do you know the owners of that property?

6 A. Well at that time, it was the Gardners. They did
7 the hay sales. They no longer do it. At the time that
8 we purchased the property, they were doing the hay
9 sales. But since then, they are no longer doing that
10 and a man named Wylie, his name is Wylie. He does hay
11 sales.

12 Q. Is that a surname?

13 A. I don't know if it is his first name or his last
14 name.

15 Q. Is that open to the public?

16 A. He advertises and you can -- In fact, we have
17 bought hay there for our horses.

18 Q. Where does he advertise?

19 A. He advertises in the Lonesome Valley Newspaper.

20 Q. Have you ever seen any of his ads?

21 A. Yes, I have.

22 Q. Do they advertise that he will deliver the hay?

23 A. I believe so.

24 Q. Does he advertise that people can come out to the
25 property to get it?

1 A. I'm not exactly sure what the advertisement says.
2 He will deliver if you purchase ten bails or more.

3 Q. When you purchased hay from him, did he deliver?

4 A. Yes, he did.

5 Q. Each time that you've purchased hay from him, has
6 he delivered?

7 A. We've only purchased one time from him.

8 Q. Okay. The llama ranch or the llama farm --

9 A. It's a ranch. It is called A Llama Ranch.

10 Q. Okay. Where is that located?

11 A. It's at the corner of Turtle Rock and Coyote
12 Springs Road.

13 Q. Do you know who owns that property?

14 A. Bill Jensen and his wife owned it at that time.
15 Since then, they have divorced but he still has llamas.

16 Q. Is that ranch open to the public?

17 A. I believe it is. I took my grandson there
18 several years ago to show him the llama and while we
19 were there, a lady came to the property to buy wool and
20 Ms. Jensen took us into a room where she stored the wool
21 from the llama and this customer chose the color that
22 she wanted and bought it while I was there.

23 Q. Is that the only time that you've ever seen or
24 have personal knowledge of someone purchasing from the
25 llama ranch?

- 1 A. It is.
- 2 Q. Does she sell her llamas, do you know?
- 3 A. She advertises them.
- 4 Q. Okay. Have you seen her advertisements?
- 5 A. Yes, I have.
- 6 Q. Where has she advertised?
- 7 A. In the Lonesome Valley Newsletter.
- 8 Q. The Lonesome Valley Newsletter?
- 9 A. Yes.
- 10 Q. Is that the same as where you saw the hay sales?
- 11 A. Yes.
- 12 Q. When you say newspaper or newsletter?
- 13 A. It is a ten- or twelve-page pamphlet.
- 14 Q. Do people subscribe to it?
- 15 A. No.
- 16 Q. Something that is just dropped off at area homes?
- 17 A. It is mailed to your home.
- 18 Q. In those advertisements for the llama ranch, do
- 19 you recall what was stated, what was being advertised?
- 20 A. The llamas I believe, but I'm not sure.
- 21 Q. Llamas to sell or llamas to view, kind of like a
- 22 tour?
- 23 A. No. It is for selling them.
- 24 Q. Anything else that you can recall?
- 25 A. No.

1 Q. In terms of the businesses that were in that subdivision
2 subdivision at the time that you purchased, have there
3 been new businesses that have started?

4 A. There have, but I do not have any time frame for
5 them.

6 Q. Okay. What new businesses?

7 A. Well there again, I'm not sure because I have to
8 think about what we saw in 1998 and I'm not really sure
9 about that junkyard. It's there now and I'm not sure
10 about when we bought the property.

11 When I said junkyards, I actually was thinking
12 about residences with a lot of junk, abandoned cars and
13 such. The junkyard itself I'm not sure about. So when
14 you ask me what new businesses are in there, I know that
15 there are many more businesses, I just don't know when
16 they came in.

17 Q. Do you know how many lots comprise the Coyote
18 Springs Ranch Subdivision?

19 A. It might be 400

20 Q. 400 or more lots?

21 A. I believe so.

22 Q. Of those, how many would you say have businesses?

23 A. I'm not sure.

24 Q. Fair to say less than half?

25 MR. ADAMS: Object to the form of the

1 question.

2 THE WITNESS: I don't know because when you
3 say businesses in the home --

4 Q. (Continued by MS. KIRK:) Well just under your
5 definition of business.

6 A. I'm not sure how I defined business with you
7 before.

8 Q. Neither am I.

9 A. Pardon?

10 Q. Neither am I. Do you want to take another stab at
11 it?

12 A. No. I'm sure the girl has it on her records. We
13 talked about businesses in the homes and I have wondered
14 about those kind of activities because I know they exist
15 in Coyote Springs.

16 Q. Do you have personal knowledge of any business
17 being conducted in a home?

18 A. There are -- I've been told about some. But
19 personally, no. I have been told about some.

20 Q. Who told you?

21 A. My neighbor.

22 Q. Which neighbor?

23 A. Wendy Chagnose.

24 Q. What was the last name?

25 A. Chagnose.

1 Q. And what has she told you?

2 A. About some people that have businesses in their
3 home.

4 Q. Well anything in particular that you recall?

5 A. Not really.

6 Q. Ma'am, I'm handing you what has been marked as
7 exhibit number three. I'll represent to you that it is
8 a copy of the recorded Declaration of Restrictions on
9 the property. I'll give it to your attorney to look at
10 first.

11 MR. ADAMS: Is there any copy of that that
12 doesn't have that blanked out?

13 MS. KIRK: That's a problem, no. Prior
14 counsel -- off the record by the way.

15 (Whereupon a brief discussion was held off the
16 record.)

17 Q. (Continued by MS. KIRK:) Ma'am, turning your
18 attention to exhibit number three. If you want to take
19 a look at that and tell me if you recognize it?

20 A. Yes, I do.

21 Q. Okay. Could you identify that document?

22 A. It is a declaration of restriction.

23 Q. And it is for the Coyote Springs Ranch
24 Subdivision?

25 A. Yes.

1 Q. And that is where you own property; correct?

2 A. Well, this one is for a June recording date and
3 specifies what lots are covered by this document.

4 Q. Okay. Is it your position that the lot that you
5 own is not covered by that June --

6 A. It is covered by this one.

7 Q. Okay. Returning your attention to exhibit number
8 three, ma'am, is that the document that you would have
9 received from Waneta Offerman?

10 A. It is probably the same one.

11 Q. In 2001 I think you said?

12 A. Yes.

13 Q. Any reason to suspect it's not?

14 A. None whatsoever.

15 Q. After you received it from Waneta Offerman, did
16 you review it?

17 A. Yes, I did.

18 Q. Did you understand it?

19 A. I hope so.

20 Q. Okay. Approximately in 2001 or 2002, do you
21 recall meeting with some of your neighbors at the
22 church?

23 A. Yes, I do.

24 Q. Do you recall when that happened?

25 A. It was in March of 2003.

1 Q. What was the purpose for that meeting?

2 MR. ADAMS: Object to the form.

3 Q. (Continued by MS. KIRK:) You attended; correct?

4 A. Yes, I did.

5 Q. Who was present?

6 A. Bob Launder was the man in charge of the
7 meeting. He conducted the meeting. My husband and I
8 were there and a lot of people that I didn't know. I
9 don't believe I could just tell you the names of all the
10 people that were there. I could tell you some of them.

11 Q. Just briefly, if you could, those that you
12 remember.

13 A. Charlie Hildebrandt. He owns Mountain Path
14 Landscaping. He is a property owner in Coyote Springs.
15 Wendy Chagnose, my neighbor. Mr. Sanders was there.
16 Mr. Cundiff was there. Dusty was there. Paul Lutes,
17 Michael Rogers, and we did have a lawyer with us at the
18 meeting. His name was Nelson Ewing.

19 Q. Did Mr. Ewing represent you?

20 A. He came to the meeting with us.

21 Q. So he was representing you and your husband?

22 MR. ADAMS: Object to the form.

23 Q. (Continued by MS. KIRK:) Was he your attorney?

24 A. We had asked him to come to the meeting. We
25 didn't know what the meeting was about, other than to

1 get rid of the nursery.

2 Q. How did you find out about the meeting?

3 A. We saw it advertised in the Lonesome Valley
4 Newsletter.

5 Q. And you said Bob Launders conducted the meeting
6 or was in charge of it?

7 A. Yes.

8 Q. Do you recall anything about the announcement in
9 the newsletter, anything in particular?

10 A. I have it someplace.

11 Q. You still have it?

12 A. I'm sure I do.

13 Q. Did anyone call you concerning the meeting?

14 A. No.

15 Q. Okay. And it is your understanding that the
16 purpose of the meeting was regarding the nursery?

17 A. Well actually, I believe that notice said, now
18 that I think about it, it was to discuss the nursery up
19 front. Mind you, there is a nursery further north. But
20 this meeting was to discuss the nursery up front.

21 Q. And what did you take that to mean, up front?

22 A. Well, we are near the front of the Coyote Springs
23 Ranch.

24 Q. Okay. What occurred at that meeting?

25 A. Mr. Launders started the meeting by presenting a

1 lot of maps and defining these CC&R's as having been
2 recorded at three different times. They were recorded
3 in June of 1974 for certain properties. Then they were
4 recorded in July of 1974 for other properties. They
5 were recorded in December of 1974 for more properties,
6 all contained in the Coyote Springs Ranch. He made a
7 point of saying that if you resided in a June recorded
8 date, you could not sue a homeowner in a December
9 recording date.

10 Q. Sue for what?

11 A. For any reason. Because in number nineteen here,
12 it says that --

13 Q. That is a bad copy, ma'am.

14 A. It says that any person can sue any other person
15 for anything but you had to stay within your unit, so to
16 speak. The meeting discussed water and went back and
17 forth about water for a while until someone said we
18 can't get them on the water, so let's get them on the
19 CC&R's.

20 Q. Do you know who said that?

21 A. No, I don't.

22 Q. Do you know who they were referring to when they
23 said that?

24 A. I'm sure they were referring to me.

25 Q. But otherwise, your name wasn't used; was it?

1 A. Not in that sentence. But at some point in the
2 meeting, Mr. Launders did ask my husband and I if we
3 would like to respond to anything.

4 Q. Did you?

5 A. At the meeting?

6 Q. Did you or your husband respond?

7 A. I remember saying something about -- I did
8 respond. I'm trying to think of what I said. It was a
9 fairly hostile meeting and I know that Mr. Launders
10 asked me a question or asked us a question at some point
11 and Mr. Ewing, the lawyer, objected to his question and
12 so we couldn't respond to that. I'm just trying to
13 remember -- Oh, I think I do remember.

14 Someone asked us why we didn't buy property, buy
15 commercial property elsewhere. I responded by saying
16 that we had driven the area many many times. We saw no
17 evidence of any rules or regulations and felt like
18 growing plants in that area would fit in with the area,
19 in general.

20 Q. Do you recall saying anything else at the
21 meeting?

22 A. I really don't. I really didn't say much of
23 anything.

24 Q. Do you recall your husband saying anything at the
25 meeting?

1 A. He did not.

2 Q. He didn't say anything or you don't recall
3 anything?

4 A. My husband, he didn't say anything.

5 Q. Okay. Do you recall who it was that asked you
6 that question?

7 A. I believe it wasn't Mr. James, because he wasn't
8 there. It was either Mr. Cundiff, I think, or Mr.
9 Sanders. I didn't know one from the other at that time.

10 Q. Okay.

11 (Whereupon, deposition exhibit four is marked.)

12 MS. KIRK: Any objection?

13 MR. ADAMS: No.

14 Q. (Continued by MS. KIRK:) Ma'am, marked for
15 identification purposes is exhibit number four. I will
16 represent to you that is a copy of the answer that we
17 received to the first amended complaint from your
18 attorney.

19 I would ask you to go to the last page of that
20 document. It is captioned verification. Is that your
21 signature appearing at the bottom, ma'am?

22 A. It is.

23 Q. And you are verifying under penalty of perjury
24 that you have read that answer?

25 A. Yes, I have.

1 Q. And that it is true and correct, to the best of
2 your knowledge?

3 A. It is that.

4 Q. Okay. If you want to go through, just ever so
5 briefly, is that to the best of your recollection a true
6 and accurate copy?

7 A. It is.

8 Q. I would like to direct your attention to -- It's
9 actually paragraph seven on page two. There are some
10 denials that are made as to certain allegations
11 contained in our complaint. I realize that you don't
12 have our first amended complaint in front of you. I
13 will represent to you though that allegation number ten
14 that you denied states, and this is a quote, "Defendants
15 had notice of the Declaration of Restrictions and the
16 Covenants contained therein at the time of purchase of
17 their real property. Said declarations having been
18 recorded."

19 Okay. That was the allegation and --

20 A. That we have a copy of them or --

21 Q. No. That you had notice of them because they
22 were recorded. Can you tell me what your factual basis
23 is for denial of that allegation?

24 A. I didn't know about them.

25 Q. Okay. You do admit though, ma'am, that exhibit

1 number three pertains to your property; correct?

2 A. That's correct.

3 Q. And as far as you can tell, based upon that
4 document, that was recorded in June of 1974; correct?

5 A. Yes.

6 Q. All right. Ma'am, in your answer that you
7 verified, you also denied, specifically stated at
8 paragraph number five in your answer, it is at the
9 bottom of the first page. If you go to the second line,
10 it is referring to the Declaration of Restrictions and
11 it says that you deny that the subject Declaration of
12 Restrictions encumbered your property.

13 Do you see that language there?

14 A. Yes, I see that.

15 Q. What is your factual basis for denying that the
16 Declaration of Restrictions do not pertain to your
17 property?

18 MR. ADAMS: I'll object to the form of the
19 question.

20 THE WITNESS: We got a copy of them in 2001,
21 right, and that is when we got a copy of them. After we
22 read them, we could see that they do not apply to us.

23 Q. (Continued by MS. KIRK:) You are saying that the
24 declarations don't apply to you because you are not
25 violating them?

- 1 A. I didn't say that.
- 2 Q. Okay.
- 3 A. I said that they don't apply to us.
- 4 Q. Why don't they apply to you?
- 5 A. They can't apply to us if ninety-nine percent of
- 6 the properties in there are also violating them.
- 7 Q. Okay. What violations are you referring to that
- 8 comprise ninety-nine percent?
- 9 A. Well, our mobile home is more than eight inches
- 10 above ground.
- 11 Q. Okay. Is it a mobile home or motor home?
- 12 A. Both.
- 13 Q. Do you also have a motor home there?
- 14 A. Yes, we do.
- 15 Q. So you have a motor home and a mobile home?
- 16 A. Yes.
- 17 Q. Okay.
- 18 A. But the mobile is more than eight inches above
- 19 ground, which is a violation.
- 20 Q. Can you tell me what paragraph it is that the
- 21 violation occurs?
- 22 A. It is number six, part B, no. That is twelve
- 23 feet -- There it is.
- 24 Q. Not more than eight inches above ground level?
- 25 A. Yes.

1 Q. And yours is six?

2 A. No. Ours is about a foot and a half above ground
3 level.

4 Q. Okay.

5 A. That is a violation.

6 Q. Okay. Who else is violating that particular
7 covenant?

8 A. Probably fifty percent of the mobile homes that
9 are out there or more.

10 Q. Have you conducted an independent review?

11 A. Not on that particular violation, but I certainly
12 can.

13 Q. Well have you conducted any independent review of
14 violations in your subdivision?

15 A. Absolutely.

16 Q. Okay. When did do you that?

17 A. I've been doing that steadily for the last six
18 months.

19 Q. Do have you any recorded documents, meaning have
20 you kept any documents or written anything down?

21 A. I have photos.

22 Q. Okay. You have photos. Did you provide those
23 photos to your prior attorney? I believe his name was
24 Michael Bourke.

25 A. Yes. Mike had those and he gave them to Mr.

1 Wilhelmsen when we were here for mediation. Mr.
2 Wilhelmsen kept them for a while and did return them at
3 some point in time.

4 Q. Any other documents that you have concerning
5 that?

6 A. It would just be photos.

7 Q. Did you go down and write out addresses?

8 A. I have parcel numbers that go with the photos.

9 Q. So the photos with the parcel numbers are the
10 extent of your documentation concerning violations, your
11 independent investigation regarding violations?

12 A. That's correct.

13 Q. You said ninety-nine percent of the property
14 owners are in violation of these covenants?

15 A. That's correct.

16 Q. Could you tell me which numbered paragraph is
17 violated?

18 A. Well, we could start with number one.

19 Q. Okay. You say that there are violations of that?

20 A. I'm not sure about number one. I thought it was.
21 It is number three. There are violations of number
22 three, of number two, number five, number six, part -- I
23 don't have A on this paper, but I think it is A. The
24 letter is missing.

25 Q. Yeah. I think the top line has been cut off.

1 A. A and B and C and D and E, number nine, number
2 eleven, number fourteen, number sixteen, and maybe all
3 of them. I just would have to have more time to study
4 them.

5 Q. Okay. With respect to paragraph one on page one,
6 I'm not sure I got your answer as to whether or not
7 there were violations.

8 A. Number one is violated.

9 Q. Aside from yourself taking photos of the area,
10 have you had anyone else conduct a review or
11 investigation of violations of the CC&R's in the
12 subdivision?

13 A. Did you say do I know of anyone?

14 Q. Well have you asked anyone? Have you requested
15 anyone to do that on your behalf?

16 A. No, I haven't.

17 Q. Do you know anyone else who has conducted an
18 investigation into violations in the area?

19 A. I do.

20 Q. Who?

21 A. I don't know that I need to tell you who.

22 Q. Was it an attorney that was working for you that
23 did it?

24 A. No. It was a homeowner.

25 Q. Okay. I'm not aware of any privilege that --

1. MR. ADAMS: You can answer that question.

2 That's fine.

3 THE WITNESS: It was a homeowner named Al
4 McRoberts and he was involved in a lawsuit over his
5 property there in Coyote Springs. He himself compiled a
6 very elaborate and extensive collection of photos of the
7 properties in the area.

8 Q. (Continued by MS. KIRK:) Does he still reside in
9 the area?

10 A. He still owns the property.

11 Q. Okay. But he is not currently living there?

12 A. He does not.

13 Q. Did you get in touch with him or did he contact
14 you?

15 A. I believe he came to our property first.

16 Q. Do you know when?

17 A. Because he had been in a lawsuit over his
18 property. He wanted to subdivide his property into
19 five, two-acre parcels and he came to our property
20 thinking that that is what we were going to do.

21 Q. Do you recall when he came to your property?

22 A. No, I don't.

23 Q. Not even the year?

24 A. I don't have a clue.

25 Q. Did he give you a copy or did you obtain a copy

1 of his report?

2 A. He tried to give it to us but he couldn't find it
3 at the time so I don't have a copy of his lawsuit.

4 Q. Not his lawsuit, his --

5 A. His pictures?

6 Q. Yes.

7 A. I don't have those either.

8 Q. Okay. Do you know whatever happened with his
9 lawsuit? Did he ever tell you?

10 MR. ADAMS: Can we go off the record?

11 MS. KIRK: I'm not familiar with it. We're
12 off the record. .

13 (Whereupon, a brief discussion was held off the
14 record.)

15 Q. (Continued by MS. KIRK:) Ma'am, where is Mr.
16 McRoberts now?

17 A. He is in Phoenix.

18 Q. Do you have a phone number for him?

19 A. I do at home.

20 Q. But you have one for him?

21 A. Yes, I do.

22 Q. Do you also have an address for him?

23 A. I don't think so.

24 Q. Okay.

25 A. I have his business card.

1 Q. All right. What property does he own in the
2 subdivision?

3 A. He owns the property directly across from the
4 Weir Stables, to the south.

5 Q. Do you know what street that is on?

6 A. It is on Kelly Road.

7 Q. One more time?

8 A. Kelly Road.

9 Q. Okay. Ma'am, let me just have this marked as an
10 exhibit, as soon as I can get my hands on it.

11 (Whereupon, deposition exhibit five is marked)

12 MR. ADAMS: No objection.

13 Q. (Continued by MS. KIRK:) Ma'am, turning your
14 attention to exhibit five, is that your signature at the
15 bottom of the page?

16 A. It is.

17 Q. Do you recognize that document?

18 A. I do.

19 Q. What is it, ma'am?

20 A. It is a letter of intent.

21 Q. Did you author that document?

22 A. I did.

23 Q. Who are you sending it to or providing it to?

24 A. It is Yavapai County Planning and Zoning Office.

25 Q. Did you send that document to them?

1 A. I did.

2 Q. And what was your purpose in writing that letter?

3 A. I wrote it because they asked for it.

4 Q. Okay. How did it come about that they asked for
5 it?

6 A. I'm not sure about that.

7 MR. ADAMS: Object to the form of the
8 question.

9 Q. (Continued by MS. KIRK:) Who is they?

10 A. Did I just say they?

11 Q. Yeah. You said they requested it?

12 A. They asked for it, I suppose I should have said
13 he.

14 Q. Okay. Who is he?

15 A. He could be anyone in that office. It could be
16 Doug Reynolds, but I'm not exactly sure. Someone in
17 that office asked me to write this.

18 Q. And by office, you are referring to the Yavapai
19 County --

20 A. Planning and Zoning Office.

21 Q. Did you contact them?

22 A. I did not.

23 Q. Okay. So planning and zoning contacted you?

24 A. Yes.

25 Q. Sometime in summer of 2002; is that correct?

1 A. Yes.

2 Q. And what was the purpose of them contacting you?

3 MR. ADAMS: Object to the form of the
4 question.

5 THE WITNESS: To ask me to write a letter of
6 intent.

7 Q. (Continued by MS. KIRK:) Okay. Why did they
8 want you to write a letter of intent?

9 MR. ADAMS: Object to the form.

10 THE WITNESS: I'm not sure. But I think
11 they wanted to put it on the website, now that I think
12 about it.

13 Q. (Continued by MS. KIRK:) This was not part of
14 any application?

15 A. It was not.

16 Q. This was not part of a request that you would
17 increase the number of trees on your property at that
18 time?

19 MR. ADAMS: Object to the form.

20 THE WITNESS: It had nothing to do with any
21 of that. It was for their website, as I recall.

22 Q. (Continued by MS. KIRK:) Did you ever go on
23 their website?

24 A. I have never looked on their website.

25 Q. Was that the last time you had a discussion with

1 anyone at Yavapai County Planning and Zoning?

2 A. I really don't know.

3 Q. Ma'am, if you'll recall immediately prior to our
4 lunch break your attorney and I had a discussion
5 regarding a particular document that you had prepared or
6 had looked at while you were testifying. In preparing
7 that particular document, did you rely on any --

8 MR. ADAMS: I'm going to object. That is
9 attorney client privilege. Don't answer.

10 MS. KIRK: You are instructing her and you
11 haven't heard the rest of what I want to say. My
12 question is what documents did they look at, if any, to
13 prepare what she prepared on that one page.

14 MR. ADAMS: That's fine. You can answer
15 that.

16 THE WITNESS: I had to look for the invoices
17 that matched the dates for what I put on that
18 chronological order of events.

19 Q. (Continued by MS. KIRK:) Did you find an invoice
20 for every date that was listed?

21 A. Yes, I did.

22 Q. Any other documents that you used?

23 A. No.

24 Q. Going back to the meeting that was at the church
25 that you testified to, what was the result of that

1 meeting, if anything?

2 A. I believe the people that were in favor of
3 pursuing our activity there in Coyote Springs planned to
4 meet again with Mr. Lauanders.

5 Q. And on what do you base that?

6 A. Because that's what they discussed in the
7 meeting.

8 Q. Okay.

9 A. People that were interested and concerned about
10 our activity wanted to talk more about it.

11 Q. Did you ever attend any other subsequent meeting?

12 A. I did not.

13 Q. Were you ever aware of any subsequent meeting?

14 A. No.

15 Q. The wholesale store that you have or the
16 wholesale site, I should say, is that under the name of
17 Prescott Valley Growers?

18 A. Yes.

19 Q. It has a sign?

20 A. There is a sign on the property.

21 Q. And your retail location on Highway 69, does it
22 have a sign?

23 A. Yes, it does.

24 Q. What does it say?

25 A. Prescott Valley Nursery.

1 Q. Does Prescott Valley Growers have a business
2 license?

3 A. Yes, we do.

4 Q. And with whom? What government agency?

5 A. With the Town of Prescott Valley.

6 Q. And your retail site, does it have a business
7 license?

8 A. Yes, we do, with the Town of Prescott Valley.

9 Q. Did you make applications for those business
10 licenses?

11 A. I think my son Alan applied for the first license
12 many years ago for the wholesale yard. We actually
13 neglected to get a license for the retail nursery, never
14 even thought about it until just in the last year or so
15 the town asked us to get a business license for the
16 retail store.

17 Q. Okay. Do you have copies or have you maintained
18 copies of those applications?

19 A. I don't have the applications. I have the
20 licenses.

21 Q. Okay. The motor home that you have on the
22 property, I just want to clarify ma'am, who lives in
23 this motor home?

24 A. No one.

25 Q. No one. What is it used for?

1 A. For recreational purposes.

2 Q. Is it titled to you and your husband?

3 A. Yes, it is.

4 Q. Okay. Is it there twelve months out of the year?

5 A. It is.

6 Q. How long has it --

7 A. It is there when it is not in Scottsdale.

8 Q. And how long is it parked there at Coyote
9 Springs?

10 A. As long as my husband is there.

11 Q. So while you are living here part-time; is that
12 correct?

13 A. No. We don't live in that motor home at all.

14 Q. No. I meant while you are living at the Coyote
15 Springs residence, the motor home is there with you?

16 A. It is as long as he is there.

17 Q. Okay.

18 A. It goes wherever he goes.

19 Q. Okay. And you may or may not go with it; is that
20 correct?

21 A. True.

22 MS. KIRK: Okay. I have nothing further at
23 this time. Thank you. I don't know if your attorney
24 wanted to ask you a few questions on the record.

25 MR. ADAMS: Just a few.

1 MS. KIRK: Which may make it subject to
2 redirect.

3 EXAMINATION

4 BY MR. ADAMS:

5 Q. Catherine, you remember Ms. Kirk asking you what
6 you recall to be a business?

7 A. Yes.

8 Q. Do you consider the United Way or Salvation Army
9 to be a business?

10 A. I would.

11 Q. Why are they a business, in your view?

12 A. They accept donations of all kinds; food,
13 clothing, money. They in turn provide services to
14 people and that makes them a business.

15 Q. Well, would you liken that as to what a church
16 does?

17 A. Yeah. Very much so.

18 Q. So on that basis, you would consider the church
19 to be a business even though it may be characterized as
20 a nonprofit corporation?

21 A. Right.

22 Q. Okay. During your direct examination you were
23 asked a number of questions regarding what you perceive
24 to be violations of the CC&R's and properties that you
25 observed and those violations. Do you recall those

1 questions?..

2 A. Yes.

3 Q. And during your direct examination you had
4 mentioned junkyards and a llama ranch. Are you aware of
5 any other type of activities out there concerning
6 vehicles?

7 A. Absolutely.

8 Q. Tell me some of the other businesses that you are
9 aware of as to vehicles?

10 MS. KIRK: Object to form. Go ahead and
11 answer, if you can.

12 THE WITNESS: There is a full-fledged
13 mechanic shop in Coyote Springs, with a two bay garage
14 and many of the Coyote Springs residents have their work
15 done at that garage. It is owned by Curtis Kinchloe.

16 Q. (Continued by MR. ADAMS:) Are there any other
17 farms or ranches out there with animals, other than
18 llamas that you have observed?

19 MS. KIRK: Object as to form.

20 THE WITNESS: There are two alpaca farms
21 that I know of, and there is a goat farm. Actually,
22 those people raise border collies that are supposed to
23 be used in the herding of sheep.

24 There is a produce company, Jose's Produce
25 Company. He has many many goats on his property. I

1 always call that a goat farm, but of course he has his
2 produce business that he operates off that property. In
3 fact, he has the produce section at the swap meet in
4 Prescott Valley. The big fruit and vegetable stand at
5 the swap meet belongs to Jose.

6 Q. (Continued by MR. ADAMS:) Where did you meet
7 with Mr. Launderers?

8 MS. KIRK: Object as to form. Which time?

9 THE WITNESS: We met with him in his
10 Prescott Valley office.

11 Q. (Continued by MR. ADAMS:) Was it during the day?

12 A. I think it was one o'clock in the afternoon was
13 the time.

14 Q. How long did you meet with him?

15 A. A good thirty or forty minutes. It could have
16 been an hour.

17 Q. And that was prior to the time that you did any
18 of your improvements to your property; correct?

19 A. That was before we had even put up a fence. I
20 think that the neighbors knew that we owned property
21 elsewhere and were concerned about us owning that
22 property.

23 Q. Was that meeting with Mr. Launderers before or
24 after the meeting that he conducted at the church?

25 A. It was long before.

1 Q. And did he give you any reason to believe during
2 the meeting with him that you would not be able to do or
3 use your property for what you are currently using it?

4 A. He never did.

5 Q. So what understanding did you leave his office
6 with?

7 A. I felt that he was untruthful by denying the
8 existence of the Weir Racing Stables, for one thing, but
9 I felt that he gave us the go ahead to do what we
10 planned to do and I still didn't know what it meant to
11 anyone out there. I still had never seen these CC&R's,
12 didn't know that people could just attack each other out
13 there for any and all reasons. I hadn't seen them and
14 yet here I was getting permission from this fellow who
15 lived out there to go ahead and do what I wanted to do
16 and I still didn't know why I needed anybody's
17 permission.

18 Q. Okay. Would it be accurate to say that you felt
19 comfortable proceeding with what you used the property
20 for after you met with Mr. Launders?

21 A. I did. I certainly did.

22 Q. You didn't have any doubt in your mind after
23 meeting with Mr. Launders because he was an attorney; is
24 that correct?

25 A. Right.

1 Q. And as an attorney and as someone who lived in
2 that community, you felt like you could rely upon what
3 he told you; correct?

4 A. I thought that he was giving us advice based upon
5 the fact that he was a lawyer. That's why we went
6 there.

7 Q. If you would please pull up exhibit number four.
8 Ms. Kirk specifically referenced your denial of
9 paragraph number ten of the complaint. Do you recall
10 those questions?

11 A. I think so.

12 Q. And specifically she referred to the complaint
13 allegation wherein they allege that you had notice of
14 the CC&R's prior to the time you purchased the property
15 and that is the allegation; correct?

16 A. Yes.

17 MS. KIRK: I object to the form. That is
18 not what I asked her and that is not the paragraph I had
19 her read.

20 MR. ADAMS: Why don't we go back to that
21 portion of that, if you are going to dispute what you
22 asked. Can you find -- Well, you haven't provided me
23 with a copy of the complaint.

24 MS. KIRK: It is not my fault you didn't
25 come prepared.

1 MR. ADAMS: It is common courtesy to provide
2 other attorneys with copies of the exhibits.

3 MS. KIRK: Just kind of like what you did
4 earlier. I understand your understanding of what common
5 courtesy is.

6 MR. ADAMS: Do you remember the question
7 that she asked regarding paragraph ten? Can you read
8 it?

9 (Whereupon, the requested portion of the record is
10 read back.)

11 Q. (Continued by MR. ADAMS:) Does that refresh your
12 recollection of the question?

13 A. Yes, but didn't I answer it?

14 MS. KIRK: Yes, you did.

15 Q. (Continued by MR. ADAMS:) Isn't it true that you
16 didn't have notice of the CC&R's at the time you
17 purchased the property because it was your understanding
18 that the CC&R's have been abandoned?

19 MS. KIRK: Objection as to form.

20 THE WITNESS: That's true.

21 MR. ADAMS: I have no further questions.

22 EXAMINATION

23 BY MS. KIRK:

24 I have a couple redirect. Ma'am, what do
25 you mean when you testify that you believed, in response

1 to your counsel's last question, you believed that the
2 CC&R's had been abandoned?

3 A. That is after I read them.

4 Q. Okay. But what do you --

5 A. What time are we talking about here?

6 Q. When you --

7 A. I said I believed they had been abandoned.

8 Q. When did you form that belief?

9 A. After I read them.

10 Q. When was that?

11 A. 2001, after I received a copy of them from Waneta
12 Offerman. We sat down and read them. I firmly believed
13 that I was not violating them and that they had been
14 abandoned and that they simply do not apply.

15 Q. What do you mean when you say abandoned?

16 A. Abandoned means to say that a rule has been
17 abandoned. That is what we are saying here. A certain
18 rule or regulation has been abandoned means that it has
19 been violated, but the violating of it has abandoned it.

20 Q. Would you say that the Coyote Springs Ranch
21 Subdivision is residential?

22 A. I wouldn't know.

23 Q. Do you know what a residential area is, ma'am?

24 A. Yes, I do.

25 Q. Would you say that the Coyote Springs Ranch

1 Subdivision is a residential area?

2 MR. ADAMS: Object to the form.

3 THE WITNESS: It may have been intended to
4 be a residential area, but it is no longer residential.

5 Q. (Continued by MS. KIRK:) What is it then?

6 A. It is agricultural, commercial, industrial and
7 residential.

8 Q. Okay. Which of those is the predominant one, in
9 your opinion?

10 A. Agricultural.

11 Q. Which is second?

12 A. Commercial. Industrial would be third and
13 residential would be last.

14 Q. And what do you base that, your opinion?

15 A. It is my own opinion.

16 Q. Right. And what do you base that opinion on,
17 ma'am?

18 A. On my views of the area.

19 Q. Okay. Do you know how many homes are in the
20 area?

21 A. I do not know.

22 Q. Do you know how many people live in that
23 subdivision?

24 A. No.

25 MR. ADAMS: Objection. Asked and answered.

1 Q. (Continued by MS. KIRK:) Not as to how many
2 people lived there. You had testified on your
3 attorney's cross that there is a full-fledged mechanic's
4 shop in the area?

5 A. That's true.

6 Q. Do you know the name of that business?

7 A. It is Coyote Kirk's Auto Repair.

8 Q. Okay. And you had also said that there is an
9 alpaca farm there?

10 A. Yes.

11 Q. There is more than one?

12 A. There are two.

13 Q. Are they both owned by the same individual?

14 A. No. They are not.

15 Q. Why do you say that those farms are businesses?

16 A. Because they buy and sell alpacas.

17 Q. And on what do you base that, ma'am?

18 A. I've talked to those women that own those farms.

19 Q. Okay. What are their names?

20 A. The newest farm is a limited liability
21 corporation and it is owned by Carry Decker, I believe.
22 The other alpaca farm is called Arizona Alpacas. That
23 is owned by Noreen -- I can't remember her last name.
24 She is registered with the Arizona Corporation
25 Commission as a business.

1 Q. Did you look that up?

2 A. Yes, I did.

3 Q. Why?

4 A. To prove that she is a business.

5 Q. When did you do that?

6 A. A year ago.

7 Q. Is that how you also found out about the other
8 farm being an LLC?

9 A. No. We have visited these people.

10 Q. And what business do they conduct?

11 A. Well, we visited Ms. Decker and there farm is
12 called Tranquil Farms, I think. I have her business
13 card.

14 Q. What do they buy or sell?

15 A. Alpacas.

16 Q. The goat farm, is that the same --

17 A. Well, that is actually a produce company.

18 Q. I was going to say is that the same as Jose's
19 Produce?

20 A. Yes. That is a produce company.

21 Q. On what basis -- That is your personal knowledge
22 that that business is going on?

23 A. Jose has told me so.

24 Q. Do you know Jose's last name?

25 A. I believe it is Coronza, but I'm not sure.

1 Q. Your meeting with Bob Launders at his office that
2 your attorney was asking you about, did you take any
3 notes during that meeting?

4 A. I did not.

5 Q. Did your husband?

6 A. He did not.

7 Q. Did you see if Bob Launders did?

8 A. Did Bob Launders take notes?

9 Q. Did you see if he did?

10 A. I don't know.

11 Q. Any other businesses in the subdivision?

12 A. There are lots of them. Did you want me to go
13 through all of them?

14 Q. Well, just in terms of types. I had asked you
15 about some and apparently when your attorney asked,
16 there were some more that you knew about. Are there any
17 more?

18 A. There are a lot of them. There's Mr. Murphy's
19 Breeding Farm.

20 Q. What do they breed?

21 A. He breeds quarter horses. There is the
22 Dependable Dutchman. He is an independent contractor
23 with a huge barn on his property. There is a sign
24 company. They make signs in their garage. I don't know
25 the name of that business, but it is a sign company.

1 Another -- There is a Lonesome Pine Ranch. That is
2 owned by Mr. Firby. He trains race horses.

3 There is a dump truck service called the Circle S
4 Dump Service, I believe. There is a highbred wolf farm.

5 Q. What is a highbred wolf farm?

6 A. They have lots of wolves in pens.

7 Q. Do they sell the wolves?

8 A. I don't know. They just have a lot of wolves on
9 the property. There's the Double Eagle Breeding Farm.

10 Q. Right. You --

11 A. I mentioned that one. There are properties that
12 have been split down to five acres, which is a violation
13 of the CC&R's.

14 Q. I'm just asking about businesses, ma'am.

15 A. Okay. There are -- There's a Christian school
16 across from the Christmas tree farm. It may no longer
17 be operating, but it was there. There was a man that
18 had a solar energy business on forty acres. He built
19 solar things to put on people's houses. He did that for
20 fifteen years on that property. I'm not sure. There
21 are a lot of businesses out there in the homes, which
22 are actually a business, except that I haven't really
23 delved into those particular businesses. There are
24 probably more.

25 Q. I'm sorry, I couldn't hear a word of what you

1 said?

2 A. There are probably more.

3 MS. KIRK: I have no further questions.

4 EXAMINATION

5 BY MR. ADAMS:

6 Q. Just one follow up question. In 1998 when you
7 purchased the property, you drove around the
8 subdivision; correct?

9 A. Yes.

10 Q. And at that time you observed all these business
11 activities that were ongoing; correct?

12 A. Yes.

13 Q. And what did that lead you to believe?

14 MS. KIRK: I am going to object as to form.

15 THE WITNESS: That it was a
16 do-your-own-thing area.

17 Q. (Continued by MR. ADAMS:) So based upon that,
18 you perceived that you didn't have any restrictions of
19 your use of the property; correct?

20 A. Right.

21 Q. And that belief was confirmed when you talked to
22 Mr. Launderers, who is an attorney and who lived in the
23 same subdivision as you did; correct?

24 A. Yes.

25 MR. ADAMS: No further questions.

1 MS. KIRK: Read and sign or are you going to
2 waive?

3 MR. ADAMS: We'll read and sign.

4 (Whereupon, the proceedings concluded at 2:28 p.m.,
5 June 22, 2004.)
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REPORTER'S CERTIFICATE

STATE OF ARIZONA : COUNTY OF YAVAPAI

I, Ashlee Mangum, Certified Court Reporter #50612, Registered Professional Reporter, State of Arizona, do hereby certify that previous to the commencement of the examination, CATHERINE COX, was duly sworn by me to testify truthfully; that the said deposition was taken in machine shorthand by me at the time and place aforesaid and was thereafter reduced to typewritten form; that the foregoing is a true and correct transcript of my stenotype notes thereof; and that signature was requested.

It is further certified I am no attorney, nor counsel, nor in any way connected with any attorney or counsel for any of the parties to said action, nor otherwise interested in the outcome of this action.

IN WITNESS WHEREOF, I have affixed my signature this 12th day of July 2004.


ASHLEE MANGUM
CERTIFIED COURT REPORTER #50612
Registered Professional Reporter

SIGNATURE OF WITNESS PAGE

STATE OF ARIZONA : COUNTY OF YAVAPAI

I, CATHERINE COX, a witness in the above deposition,
do hereby certify that I have read the foregoing
deposition, and that the said deposition is a true and
correct record of my testimony, with such corrections
and changes, if necessary, listed below.

Catherine Cox

CATHERINE COX

(IF THERE ARE NO CHANGES, WRITE "NONE.")

PAGE	LINE	READS	CHANGE TO	REASON
58	19	Uncle Barry's	Eikleberry's	Misspelling
64	7	leaving out	leafing out	Misspelling
128	2	Mr. Firby	Mr. Furbee	Misspelled
128	4	high bred	hybrid	Misspelled



~~20 acres~~ KC 212A

VI High Density Use
page 8

Yavapai County Agricultural Guidelines

I. Eligibility

To be eligible for agricultural classification, property must meet specific criteria in the following areas:

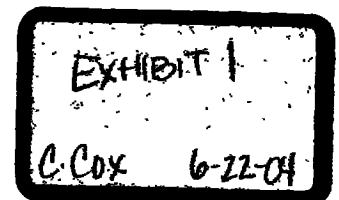
- A. Use
- B. Expectation of Profit
- C. Functional Contribution

A. Use

1. The primary use of the land must be for agricultural purposes. Ownership alone does not qualify property for agricultural classification. The primary determinate is use.
2. The land must have been in active production for at least seven of the ten years prior to application.

There are seven conditions that may provide exception to the 7/10 rule. These are not hard and fast exceptions but will be reviewed on a case-by-case basis.

- a) Property out of production due to "acts of God" for not more than twelve months.
- b) Property participating in a federal program requiring acreage conservation.
- c) Property in a scheduled crop rotation plan.
- d) Property which is inactive due to temporary reduction or transfer of available water supply.
- e) Grazing land which is inactive or partially inactive due to reduced carrying capacity or generally accepted range management practices.
- f) Land to which a feedlot or dairy operation has been moved if it has been moved from a location which previously qualified.



- g) Property approved by the county assessor for unusual conditions. Department of Revenue must also approve.

B. Expectation of Profit

There must be a reasonable expectation of operating profit, exclusive of land cost, from the agricultural use of the property. The test of "reasonable expectation of operating profit" is whether a prudent rancher or farmer is managing or operating his unit similar to other experienced and successful ranchers or farmers and reasonably expects to make a profit in a reasonable period of time. There are eight relevant factors included in the test:

1. The manner in which the operator carries on the agricultural activity. The operator must:
 - a) operate in a businesslike manner
 - b) maintain complete books and records
 - c) manage substantially similar to other agricultural activities that are profitable
2. The expertise of the operator or his advisors. Expertise is demonstrated by:
 - a) extensive study of accepted business practices
 - b) consultation with experts
3. The time and effort expended by the operator in carrying on the agricultural activity. Evidence would be:
 - a) how much personal time and effort is devoted to agricultural activity
 - b) withdrawal from another occupation to devote time and energy to agricultural activity
 - c) the employment of competent and qualified persons
4. The success of the operator in carrying on other agricultural activities in the past.
5. The operator's history of income or losses with respect to the agricultural activity. Losses that may not be indicative:
 - a) initial or start up losses
 - b) sustained losses brought on by unforeseen or fortuitous circumstances such as drought, fire and weather. Income over a series of years would be indicative.

6. If operating profits are earned only occasionally, the amount of the profit, the relationship of profits to losses in both amount and frequency as well as the return on investments could indicate profit expectations.
7. The financial status of the operator. Substantial income from sources other than the agricultural activity may indicate that the activity is not engaged in with a reasonable expectation of profit.
8. Elements of personal pleasure or recreation. Agricultural property owned strictly for personal motives such as lifestyle or recreational opportunities would not be indicative of profit expectation.

C. Functional Contribution

Noncontiguous parcels must be managed or operated on a unitary basis and each parcel must make a positive economic contribution to the agricultural unit. Contribution may be through common management that allows more efficient use of labor, machinery or equipment. Noncontiguous parcels may also contribute by providing a water supply needed to supplement the primary agricultural property.

Noncontiguous parcels may be owned or leased by the operator. In general they must be fenced, have an independent water source and ingress and egress.

II. Qualification

Agricultural activity and size requirements:

A. Cropland

1. At least 20 acres
2. Land cultivated for crops that are harvested once a year such as cotton or with root systems that remain intact to produce another harvest like alfalfa.

B. Permanent Crops

1. 10 or more gross acres
2. Plants or trees which produce a crop and are perennial.

C. Grazing Land

1. Large uncultivated acreage utilizing natural forage.
2. Sufficient gross acreage to provide carrying capacity to support 40 animal units.
(See Additional Information Section V.)

D. High Density

1. No minimum acreage.
2. Intensive use through comparatively large amounts of labor or capital per unit of land.
(See Additional Information Section V.)

E. Processing of Cotton

1. No minimum acreage.
2. Land used for cotton ginnery is same as high density.

F. Processing of Grapes

1. No minimum acreage.
2. Further processing (after picking) of grapes is high density.
3. Since land use to grow grapes is permanent crop land, wineries may have several land values.

III. Filing Requirements

Agricultural Land Use Form (82916)

The owner or the owner's designated agent must file a completed agricultural use application before the property may be classified as agricultural. Note that the owner or owner's agent must file the application. The owner may or may not be the operator. The filing of the form does not alone grant agricultural status. The other requirements of eligibility and qualifications set forth earlier in these guidelines must also be met before agricultural status can be granted.

A. When to file an application

The agricultural use application form must be filed by a property owner or his agent (not the operator).

1. To apply for agricultural classification for the first time. This would include newly created parcels regardless of previous status on the parent parcel.
2. By the new owner within 60 days of a change in ownership.
3. Within 60 days of a change in use that results in all or part of the property not meeting qualifications for agricultural status.

B. What must be reported

1. Parcel number(s) and size.
2. Type of crops grown.
3. Number of acres leased and terms of the leases.
4. Affirmation that eligibility requirements have been met.
5. Number of animal units raised.

C. Penalties

1. The assessor shall not classify the property, on notice of valuation, as being used for agricultural purposes if the owner or agent does not file an application as prescribed above. (Note: the owner may subsequently appeal as prescribed in A.R.S. 42-221.)
2. Failure to notify the assessor within 60 days of a change in qualifications causes the property to immediately lose agricultural classification and be valued at non-agricultural full cash value. Owner is liable for additional tax plus a penalty.

D. Notification

1. The assessor must notify the owner of a property whether the assessor has approved or disapproved the agricultural classification of the property on or before the date on which the assessor next mails the owner the notice of valuation for the property. If the assessor disapproved the agricultural classification, the assessor shall notify the owner of the reason for disapproval.

Statement of Agricultural Land Lease (82917)

A.R.S 42-1615 requires that agricultural land owners, lessors, or agents acting on their behalf, provide the assessor with a written report of specific lease or rental conditions for any agreement lasting more than 90 days. The assessor is obligated to provide a copy of each land lease statement to the Department of Revenue.

A. When to file a statement

The owner/lessor shall file a separate statement for each lease within 3 months or by January 31, whichever is later:

1. A change in ownership or the lessee of the property or
2. A change in the lease terms and conditions as previously reported or
3. A change in the use of all or part of the property.

B. What must be reported

The written statement provided to the assessor must include the following information:

1. The name and address of the lessor and lessee.
2. The complete legal description of the property.
3. The situs address of the property.
4. The cash or cash equivalent of the lease payments.
5. The conditions of the lease, including the relationship of the parties.
6. The lessor expenses associated with the property, excluding land cost and interest paid, income tax depreciation, and capital improvements.

The Statement of Agricultural Land Lease (DOR form 82917) which is available from the assessor provides for those items mentioned above. The lease form also requires disclosure if the lessor is related to the lessee, (e.g.: spouse, family member, etc.). Additionally, various terms of the lease may be disclosed. Pertinent lease terms may include share crop, partial upkeep, maintenance, or the responsibility for making minor or major improvements. In some cases, the cost of making repairs and/or improvements may be attributed to or deducted from the rental payments.

IV. Valuation

A.R.S. 42-141(A) (5) specifies land classified as agricultural shall be valued by the income approach. The value is based on the average five year typical net rental income for comparable properties. Allowable expenses, including sales and property taxes, are deducted from gross rent to arrive at net cash rental.

V. Additional Information

Grazing Land

For property to be classified as grazing land or ranch property, its primary use must be livestock grazing on large uncultivated acreage utilizing natural forage. There are two major qualifications for grazing land. They are:

1. There must be sufficient gross acreage to provide a minimum carrying capacity of 40 animal units.
2. The property must be stocked with a sufficient number of animal units to make the operation economically feasible.

Helpful Definitions

Animal Unit - The unit of measure for livestock based upon the amount of forage required for one 1,000 pound mature cow, either dry or with calf up to six months of age, or their equivalent.

For example, the following measures are considered the equivalent of one animal unit:

- One mature beef animal of 1,000 pounds, or
- One and one-quarter horses,¹ or
- Five goats, or
- Five sheep

(Note: for weaned beef animals over six months of age but less than 1,000 pounds, the animal unit equivalent may be computed by using the ratio of average animal weight to 1,000 pounds. For example, a weaned calf of 600 pounds equals 0.6 animal unit.)

¹ Only working ranch horses can count as animal units. Pleasure horses, racing horses, breeding horses, boarded horses or any other horses kept for commercial purposes would not count as animal units.

Carrying Capacity - The measure of the capacity of grazing land to provide adequate forage to sustain livestock for a given time period. Carrying capacity is expressed in terms of animal units per section (640 acres) of grazing land per year. Carrying capacity varies depending on type and quality of forage available and water supply.

Carrying Capacity in Animal Units - While associated with the Department of Agricultural Economics at the University of Arizona, Mr. N. Gene Wright developed a map to exhibit study results of vegetation and grazing capacities. The Arizona Department of Revenue adopted the "Wright map" as a basis for the calculation of grazing land usage. This map was prepared primarily for determining the carrying capacity of land for cattle, but it may serve as a starting point for all livestock. There might be instances where land is more suitable for grazing livestock other than cattle, such as goats or sheep. In these instances, a separate determination of carrying capacity must be made. In all cases, "economic feasibility" must be considered, as well as carrying capacity.

The map shows the animal unit carrying capacity per section by township for Yavapai County. The township numbers are arranged vertically. The range numbers are arranged horizontally, with an east/west locator. The number in the table for each corresponding township and range is the animal unit carrying capacity per section for that area of grazing land as defined on the Wright map.

VI ☐ High Density Use

High density agricultural use is defined as intensive use of land for production of a high yield crop or commodity wherein comparatively large amounts of labor and capital are required per unit of land. There is no minimum acreage requirements for this classification. To qualify for valuation as high density agricultural land, the primary use of the land must be for production of a high yield agricultural crop or commodity. Examples are flowers, ornamental plants, rose bushes, trees (other than standing timbers) and greenhouses.

Land used for the purpose of raising and breeding animals, raising poultry, producing eggs, milk products or honey and similar agricultural activities may also qualify for designation as high density use agricultural land if it is intensively developed and meets the other statutory requirements. This would include the breeding of livestock that is other than part of a ranching operation. However, land primarily used for boarding of horses or other animals or breeding of animals for pet or recreation use shall be considered commercial property.

VII Personal Property

Beginning with the 1997 tax year, all persons owning taxable agricultural personal property must complete a personal property statement upon demand by the county assessor (form 82520A). The statement must be filed annually by May 1, or within 45 days of the date the assessor mails the statement. Personal property includes all farm and ranch machinery and equipment used in the production of crops, livestock and on-the-farm processing of feeds. Statements filed with the assessor must contain full and complete lists of property in the possession and control of the taxpayer.

Pre-printed forms sent by the assessor contain information based on prior year's reports in Section 3. The taxpayer should insure that the report is current and a complete list of all business personal property. Section 5 is used to report any acquisitions made in the prior year. Section M is used to report commercial livestock (such as show horses and race horses) and other animals that are not exempt.

For 1997, up to the first \$50,000 of full cash value of an owner's agricultural business property (Legal Class 4P) will be exempt from property tax. In order to claim the exemption, the owner or agent must sign the form in Section 7.

VIII Equine Operations

I. Eligibility

To be eligible for agricultural classification, property must meet specific criteria listed in this section. These operations are also required to meet the general guidelines, which cover all agricultural operations.

The operations approved will be placed under the High Density Classification.

A. Use

B. Expectation of Profit

C. Functional Contribution

A. Use

1. The types of equine operations which could be approved under the High Density Classification will be based on the following considerations:

- a) Primary use of the land must be for production of a high yield commodity as defined by the Department of Revenue. It states: "Commodities are defined as agricultural products that can be transported and sold at market such as hay, grain, vegetables, cotton and livestock."
- b) An intensive use of the land for production.
- c) Generally the operation incurs a large amount of labor and capital required per unit of land.
- d) The acreage requirements are reflective of the size of the operation, not to fall below one horse per a half acre.

2. The types of operations which do not qualify are as follows:

- a) Property being used for commercial purposes such as:
 - i) For boarding of horses for other private or business entities.
 - ii) For use as a dude ranch, trail rides etc.
 - iii) For breeding and sale of commercial stock such as race, show or competitive horses.
- b) Property being used for private or personal use of the property owner or associates.

3. Mixed Use

Many properties could fall into a combination of the approved and/or unapproved operations. When this occurs, the Assessor or Assessor's agent will determine the actual uses and the percentages of the approved and unapproved type of operations. If the percentage of approved property meets the requirements then the classification will be applied and valued appropriately. (See example at end of packet)

B. Expectation of Profit

1. Similar to ranching operations, the market will be controlled by the supply and demand of horses for ranches, racing, show and as a commodity.
2. Due to the market demands adjusting continually, the number of horses in each category should be supplied at the time of review by the Assessor's office.
3. New operations filing in the county need to report the number of horses in each category and supply an income and expense statement while the Assessor is considering the classification. The type of operation will dictate the number of years required for the review prior to the determination, but will not exceed seven years.

C. Functional Contribution

Equine operations do contribute to the overall agricultural community as long as they meet the definition found in this handout and the general guidelines.

Approval will be granted if the operation meets these guidelines and the general guidelines.

Mixed Use Example:

An equestrian operation has 50 acres. There is a 1acre homesite, which the market supports a \$10,000/acre value: 20 acres are irrigated pastures, which is valued at \$432/acre: 1.5 acres are used for showing and boarding commercial stock and private horses, which is valued at \$15,000/acre; 1 acre has the barn, tackrooms and equipment, which is valued at \$432/acre; 5 acres are for the training and boarding of race horses, which is valued at \$15,000/acre; 18.5 acres is a turning out area for stock, which is valued at \$432/acre and 3 acres are used for trail rides.

Land Values

Homesite	1 acre	@	10,000	10,000
Commercial	9.5 acres	@	15,000	142,500
Agricultural	39.5 acres	@	432	17,064
	50.0 acres			169,564

Land Ratio is $02/10 + 19/25 + 79/16 = 17.59\%$

$$\begin{array}{r}
 111 \\
 12 \overline{) 1320} \\
 \underline{120} \\
 120
 \end{array}$$

$$\begin{array}{r}
 320 \\
 12 \overline{) 384} \\
 \underline{12} \\
 12
 \end{array}$$

4,320

$$\begin{array}{l}
 300 \times 150 \\
 210 \times 250
 \end{array}$$

1 1 1

11 11

AGRICULTURAL LAND USE APPLICATION

Pursuant to A.R.S. § 42-167, 42-221

- See the reverse side of this form for complete filing requirements and definitions.
- Complete Sections A through F.
- Attach a copy of all lease agreements pertaining to any land you own or lease.
- File the TOP TWO copies with the County Assessor in which the property is located.

ASSESSORS USE ONLY

Farm Unit No. _____

A FILE DATE 1/15/2001 COUNTY Yavapai

B PLEASE PRINT TAXPAYER'S NAME AND ADDRESS
Cox, Donald and Catherine

NAME
6750 North Robert Road

ADDRESS
Prescott Valley, AZ. 86314 ()

CITY STATE ZIP TELEPHONE

C If the land has not been in production for at least 7 of the last 10 years or if the unit contains less acreage or animal units than the minimum requirements, provide explanation:

D AGRICULTURAL USE PARCELS

ASSESSORS USE ONLY

No.	Book - Map - Parcel	Acres	Land Use or Animal Units	Crop Type or HD Use	PUC	Approved	Denied	Reason
1	103-01-141	6.50	Green House	HD	4017	XXX		This parcel is approved for Ag. classification per field check and proper documentation supplied. This decision is for the 2001 valuation year. 12/18/2001
2	103-01-069F	12.98	11	11	4015			
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								

E LAND LEASED TO YOU Provide name and address of owner(s)
Include any Government Leases.

of Acres

Length of Lease

From

To

Book-Map-Parcel

EXHIBIT 2

Cox 10-22-01

F I hereby verify that the above listed properties meet the requirements for agricultural classification.

Mrs. Catherine Cox
Signature of Owner or Representative

State Board of Appraisal #
Include a current Agency Authorization (82130AA)

Date

775-4813
Phone Number

INSTRUCTIONS FOR AGRICULTURAL LAND USE APPLICATION

This application is to be used by owners to file for agricultural classification pursuant to A.R.S. § 42-167 under the following circumstances:

1. The owner is a citizen of the United States, qualified or classified as an agriculturist.
2. Within 180 days of a change in ownership, the new owner must file this application to maintain agricultural classification of the property.

If an owner of property or the owner's designated agent intentionally provides false information on an application, or fails to provide the notification required (item 2 above), the property shall immediately be classified as being used for non-agricultural use and shall be valued at its non-agricultural cash value. The owner will also be liable for the additional taxes based on the non-agricultural value of the property for all of the tax years in which the property was classified based on the false information together with a penalty equal to twenty-five (25%) of the additional taxes.

- Complete Sections A through F. Do not complete shaded areas.
- Include all parcel numbers and acreage, if known, which make up the agricultural unit. An "agricultural unit" is a combination of parcels owned and/or leased which make up an operating farm or ranch, including property under A.R.S. § 42-167.

A. Land Use Codes

FC Field Crops (cotton, lettuce, etc.)

PC Permanent Crops (citrus, etc.)

HD High Density (feedlot, nurseries, etc.)

CIN Cotton gin

GR Grazing Land (include total number of animal units). Grazing land must have a minimum carrying capacity of 40 animal units and must contain an economically feasible number of animal units.

- Attach a copy of any lease agreements of land you do not own.
- Sign the application and retain a copy for your records.
- Mail or hand deliver the TOP TWO copies to the County Assessor in which the property is located.
- The Assessor will notify the owner if the land has been approved or disapproved for agricultural classification on or before the date on which the Assessor next mails the owner the Notice of Valuation for the property.
- If agricultural classification is denied, the Assessor is required to notify the owner of the reason for disapproval.
- The owner may file an appeal of the decision with the Assessor as prescribed in A.R.S. § 42-221. A "Petition for Review of Real Property Valuation" may be obtained from the County Assessor's Office.

The owner is required to notify the Assessor within sixty days if there is a change in use of all or part of the property. (A.R.S. § 42-167 E)

For Land Leased By The Owner to Another Taxpayer:

Pursuant to A.R.S. § 42-1615, An Agricultural Lease Statement (DOR 82917) must be filed for leases exceeding ninety days if a change in the terms of the lease occurs or a change in ownership occurs. The statement shall be filed with the County Assessor within three (3) months after the change or prior to January 31, whichever is later. The Agricultural Lease Statement may be obtained from the County Assessor's Office.

I do hereby certify that the within instrument was filed and recorded at the request of Tom Lynch
 on June 13 A.D. 1974 at 1:35 o'clock 916 Book 916 Official Records
 Page 680-681-682 Records of Yavapai County, Arizona.

WITNE'S my hand and official seal the day and year first above written.

PATSY C. JENNEY, County Recorder

By Mary E. Hampton

CUYUTE SPRINGS RANCH

DECLARATION OF RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS:

That Robert D. Conlin and Margaret Dell Conlin, his wife, and David A. Conlin, Jr., husband of Anne Conlin, dealing with his sole and separate property, being the owners of all the following described premises, situated in the County of Yavapai, State of Arizona, to-wit:

GOVERNMENT LOTS One (1) and Two (1) and the South half of the Northeast quarter and the Southeast quarter of Section One (1); all of Section Twelve (12); the East half and the East half of the East half of the Southwest quarter and the East half of the East half of the Northwest quarter and the Northwest quarter of the Northeast quarter of the Northwest quarter of Section Thirteen (13); the East half of Section Twenty-four (24); the East half of Section Twenty-five (25), all in Township Fifteen (15) North, Range One (1) West of the Gila and Salt River Base and Meridian; and

All of Section Six (6); all of Section Seven (7), GOVERNMENT LOTS One (1), Two (2), Three (3), and Four (4), and the Southeast quarter of the Southwest quarter and the South half of the Northeast quarter of the Southwest quarter of Section Nineteen (19), all in Township Fifteen (15) North, Range One (1) East of the Gila and Salt River Base and Meridian.

and desiring to establish the nature of the use and enjoyment of the premises hereinabove described, sometimes hereinafter referred to as property or premises, does hereby declare said premises subject to the following express covenants and stipulations as to the use and enjoyment thereof, all of which are to be construed as restrictive covenants running with the title to said premises and each and every part and parcel thereof and with each and every conveyance thereof hereafter made to-wit:

1. Each and every parcel of the above-described premises shall be known and described as residential parcels; that is to say, mobile, modular or permanent dwellings may be erected and maintained upon said premises, subject to limitations with respect thereto as hereinbelow set forth.
2. No trade, business, profession or any other type of commercial or industrial activity shall be initiated or maintained within said property or any portion thereof.
3. Said property or any portions thereof shall not be conveyed or subdivided into lots, parcels or tracts containing less than nine (9) gross acres, nor shall improvements be erected or maintained in or upon any lot, parcel or tract containing less than such nine (9) gross acres.
4. No structure or improvement of any kind or nature whatsoever shall be erected, permitted or maintained upon, over or across the easements or reservations for utilities or drainage, if any.
5. Residence buildings must be completed within twelve (12) months from commencement of construction. No garage, carport or other building shall be commenced or erected upon any portion of said property until the main dwelling building complying with this Declaration is under construction or has been moved onto the premises. Commencement of construction, for the purposes of this Declaration, shall be deemed to be the date material, raw or otherwise, shall have been placed or stored upon the premises.
6. All residence buildings to be erected, constructed, maintained or moved upon the premises or any portion thereof, as the case may be, shall be of new construction. Residence buildings shall have concrete foundations and hardwood or concrete floorings.

EXHIBIT 3

C Cox 6 21-01

"Covenants and restrictions if any, based upon race, color, religion, sex, handicap, familial status or national origin are deleted unless and only to the extent that said covenant is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons."

"Covenants and restrictions if any, based upon race, color, religion, sex, handicap, familial status or national origin are deleted unless and only to the extent that said covenant is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons."

square feet of ground floor area including storage but exclusive of any portion thereof used for open porches, pergolas, patios, carports or garages, whether or not they are attached to, or adjacent to, said residence.

(b) Mobile homes shall (1) contain not less than 720 square feet of ground floor area devoted to living purposes; (2) be not less than 12 feet in width; (3) be placed so that the floor thereof is not more than 8 inches above the ground level;

(c) Travel Trailers or campers may occupy homesites during vacation periods, not [REDACTED], or during the period of residence construction.

(d) No prefabricated or pre-erected dwelling having less than the above applicable square foot requirements, exclusive of open porches, pergolas or attached garage, if any, shall be erected, permitted or maintained on any portion of said property.

(e) No structure whatever other than one single family dwelling or mobile home, as herein provided, together with a private garage for not more than three (3) cars, a guest house, service quarters and necessary out buildings shall be erected, placed or permitted to remain on any portion of said property.

8. No 'Real Estate' or 'For Sale' sign or signs exceeding 24" by 24" may be erected or maintained on said premises. No general advertising signs, billboards, unsightly objects or public or private nuisances shall be erected, placed or permitted to remain on any portion of said premises.

9. No abandoned auto or auto parts or used machinery or other salvage or junk shall be placed or permitted to remain on any portion of said premises.

10. No swine shall be raised, bred or kept upon said premises. Said premises shall not be used in any way or for any purpose that may emit foul or noxious odors.

11. No mobile home shall be used or permitted to remain upon any lot unless such mobile home shall have two hundred (200) square feet of permanent roof, exclusive of mobile home roofing, and two hundred (200) square feet of concrete flooring, including cabanas, porches, storage, carports and garages, but exclusive of any portion thereof used as flooring or base for said mobile home.

12. All structures on said lots shall be of new construction, not exceeding 35 feet in height, and no buildings shall be moved from any other location onto any of said lots with the exception of prefabricated or pre-erected dwellings where the use thereof is permitted.

13. No temporary building may be moved onto or constructed on said premises, with the exception of temporary shop or office structures erected by contractors, or buildings during the actual bona fide construction or a permitted structure upon the premises, provided the contractor or builder agrees to remove such temporary shop or office structure within five (5) days after the actual final completion date of his construction activities of the premises.

14. No construction shed, basement, garage, tent, shack or other temporary structure shall at any time be used as a residence either temporarily or permanently.

15. No residence or dwelling shall be occupied or used prior to installations therein of water flush toilets and sanitary conveniences or facilities and shall be maintained in a sanitary manner and in conformity with all applicable local, county or state laws, as the case may be. No outside toilet or other sanitary conveniences or facilities shall be erected or maintained upon said premises.

[REDACTED] garbage or trash containers, oil tanks, bottled gas tanks and other such facilities shall be underground or placed in an enclosed area so as to not be visible from the adjoining properties.

17. The foregoing restrictions and covenants run with the land and shall be binding upon all parties and all persons claiming through them until June 1, 1994, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, or so long thereafter as may be now or hereafter permitted by law.

18. Invalidity of any of the restrictions, covenants or conditions above by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

19. If there shall be a violation or threatened or attempted violation of any of said covenants, conditions, stipulations or restrictions, it shall be lawful for any person or persons owning said premises or any portion thereof to institute proceedings at law or in equity against all persons violating or attempting to, or threatening to violate any such covenants, restrictions, conditions or stipulations, and either prevent them or him from so doing.

The violation of these restrictive covenants, conditions or stipulations or any one or more of them shall not affect the lien of any mortgage now of record, or which hereafter may be placed of record, upon said premises or any part thereof.

IN WITNESS WHEREOF, the above named parties have executed the within Declaration of Restrictions this 12th day of June, A.D., 1974.


Robert D. Conlin


Margaret Bell Conlin


David A. Conlin, Jr.

STATE OF ARIZONA)
County of Maricopa) ss.

On this, the 12th day of June, 1974, personally appeared Robert D. Conlin and Margaret Bell Conlin, his wife.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My commission expires: 2-20-77


Notary Public

STATE OF ARIZONA)
County of Maricopa) ss.

On this, the 12th day of June, 1974, personally appeared David A. Conlin, Jr.

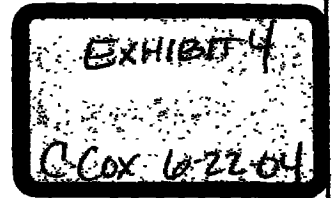
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My commission expires: 2-20-77


Notary Public

1 Mark W. Drutz, #006772
Jeffrey R. Adams, #018959
2 MUSGROVE, DRUTZ & KACK, P.C.
1135 Iron Springs Road
3 Prescott, Arizona 86305
(928) 445-5935

4 Attorneys for Defendants
5



6 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**

7 **IN AND FOR THE COUNTY OF YAVAPAI**

8 JOHN B. CUNDIFF and BARBARA C.)
CUNDIFF, husband and wife;)
9 ELIZABETH NASH, a married woman)
dealing with her separate property;)
10 KENNETH PAGE and KATHRYN)
PAGE, as Trustee of the Kenneth Page)
and Catherine Page Trust,)

12 Plaintiffs,)

13 v.)

14 DONALD COX and CATHERINE)
COX, husband and wife,)

15 Defendants.)
16
17

CASE NO. CV 2003-0399

DIVISION 1

**ANSWER TO PLAINTIFFS' FIRST
AMENDED COMPLAINT**

(Assigned to the Honorable David L. Mackey)

18 Defendants Donald Cox and Catherine Cox, husband and wife ("Defendants"), by and through
19 undersigned counsel, hereby answer Plaintiffs' First Amended Complaint ("Complaint") in the
20 above-captioned matter as follows:

- 21 1. Defendants admit the allegations contained in Paragraphs 1, 2 and 3 of the Complaint.
- 22 2. Defendants deny the allegations contained in Paragraph 4 of the Complaint.
- 23 3. Answering Paragraphs 5 and 6 of the Complaint, Defendants lack knowledge or
24 information sufficient to form a belief as to the truth or falsity of the allegations of said paragraphs
25 and, accordingly, deny the same.
- 26 4. Defendants deny the allegations contained in Paragraph 7 of the Complaint.
- 27 5. Answering Paragraph 8 of the Complaint, Defendants assert that the Declaration of
28 Restrictions attached as EXHIBIT A to the Complaint speaks for itself but deny that the subject

1 Declaration of Restrictions encumbered Defendants' property or were breached by Defendants in any
2 way and therefore Defendants deny the allegations or any inferences contained in Paragraph 8 of the
3 Complaint.

4 6. Answering Paragraph 9 of the Complaint, Defendants lack knowledge or information
5 sufficient to form a belief as to the truth or falsity of the allegations of said paragraph, and accordingly,
6 deny the same.

7 7. Defendants deny the allegations contained in Paragraphs 10, 11, 12, 13 and 14 of the
8 Complaint.

9 8. Defendants admit the allegations contained in Paragraph 15 of the Complaint.

10 9. Answering Paragraph 16 of the Complaint, Defendants reallege and incorporate by
11 reference their answers to Paragraphs 1-15 of the Complaint as if each were fully set forth herein.

12 10. Defendants deny the allegations contained in Paragraphs 17 and 18 of the Complaint.

13 11. Answering Paragraph 19 of the Complaint, Defendants reallege and incorporate by
14 reference their answers to Paragraphs 1-18 of the Complaint as if each were fully set forth herein.

15 12. Defendants deny the allegations contained in Paragraphs 20 and 21 of the Complaint.

16 13. Answering Paragraph 22 of the Complaint, Defendants reallege and incorporate by
17 reference their answers to Paragraphs 1-21 of the Complaint as if each were fully set forth herein.

18 14. Defendants deny the allegations contained in Paragraphs 23 and 24 of the Complaint.

19 15. Answering Paragraph 25 of the Complaint, Defendants reallege and incorporate by
20 reference their answers to Paragraphs 1-24 of the Complaint as if each were fully set forth herein.

21 16. Defendants deny the allegations contained in Paragraph 26, 27 and 28 of the
22 Complaint.

23 17. Answering Paragraph 29 of the Complaint, Defendants reallege and incorporate by
24 reference their answers to Paragraphs 1-28 of the Complaint as if each were fully set forth herein.

25 18. Defendants deny the allegations contained in Paragraph 30 of the Complaint.

1 19. Defendants deny each and every allegation in the Complaint not expressly admitted
2 herein.

3 20. Defendants deny that Plaintiffs are entitled to any of the relief or remedies requested
4 in the Complaint or to any relief or remedy of any kind whatsoever.

5 21. Defendants are entitled to an award of their reasonable attorneys' fees incurred in
6 defending against the Complaint pursuant to A.R.S. §§ 12-341.01 and 12-349.

7 **AFFIRMATIVE DEFENSES**

8 22. Defendants allege Plaintiffs have failed to state a claim upon which relief can be
9 granted.

10 23. Defendants allege that the Declaration of Restrictions attached as EXHIBIT A to the
11 Complaint have been abandoned and are no longer enforceable as against Defendants.

12 24. Defendants allege that the counts against them in this action are barred by the doctrines
13 of estoppel, waiver and laches.

14 25. Defendants allege the Complaint fails to allege a legitimate equitable or legal basis for
15 imposing any liability against them in this matter.

16 26. Defendants allege that the Complaint is barred because of Plaintiffs' own negligence,
17 acts, omissions, carelessness and/or inattention.

18 27. Defendants allege that the Complaint is barred because the damages alleged by
19 Plaintiffs were a direct and proximate result of acts and omissions of persons or entities other than
20 Defendants.

21 28. Defendants allege that any legal obligations required of them under the law have been
22 discharged.

23 29. Defendants allege for affirmative defenses release and any other matter constituting
24 an avoidance or affirmative defense and also alleges that discovery may reveal the existence of other
25 affirmative defenses as set forth in Rules 8(c) and 12(b), Ariz. R. Civ. P., and they reserve the right
26 to amend this Answer to allege any and all of said affirmative defenses as may be applicable.

1 WHEREFORE, having fully answered each and every Count of Plaintiffs' First Amended
2 Complaint, Defendants request Judgment in their favor and against Plaintiffs as follows:

3 A. Dismissing the Complaint with prejudice and ordering that Plaintiffs take
4 nothing thereby;

5 B. Awarding Defendants their reasonable attorneys' fees and costs pursuant to
6 A.R.S. §§ 12-341.01 and 12-348 and interest thereon at the highest legal rate;

7 C. For such other and further relief as the Court deems just and necessary under
8 the premises.

9 Respectfully submitted this 21st day of May, 2004.

10 MUSGROVE, DRUTZ & KACK, P.C.

11 By 

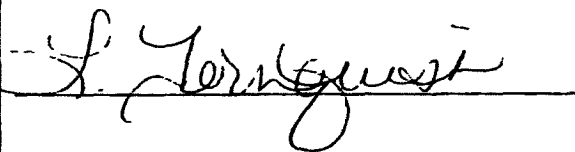
12 Mark W. Drutz
13 Jeffrey R. Adams
14 Attorneys for Defendant

15 A copy of the foregoing
16 was hand-delivered this
17 21st day of May, 2004 to:

18 Honorable David L. Mackey
19 Yavapai County Superior Court
20 Division One
21 Yavapai County Courthouse
22 Prescott, Arizona 86301

23 and a copy was mailed this
24 21st day of May, 2004 to:

25 David K. Wilhelmsen
26 Marguerite M. Kirk
27 FAVOUR, MOORE & WILHELMSSEN, P.A.
28 Post Office Box 1391
Prescott, Arizona 86302-1391
Attorneys for Plaintiffs



VERIFICATION

STATE OF ARIZONA)
County of Yavapai) ss.

Catherine Cox, being first duly sworn upon her oath, deposes and says:

That she is one of the Defendants in the above-captioned matter; that she has read the foregoing Answer to Plaintiffs' First Amended Complaint and that the contents contained therein are true in substance and in fact, except as to those matters stated upon information and belief, and as to those, she believes them to be true.

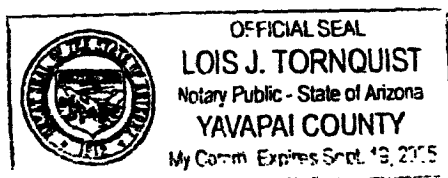
Catherine Cox
CATHERINE COX

SUBSCRIBED AND SWORN to before me this 19th day of May, 2004, by Catherine Cox.

Lois J. Tornquist
Notary Public

My Commission Expires:

9/19/05



July 29, 2002

Donald and Catherine Cox
7325 North Coyote Springs Road
Prescott Valley, Arizona 86314

LETTER OF INTENT

PRESCOTT VALLEY GROWERS began operations at 6750 North Viewpoint Drive in July 1991. Since then we have grown with the Town of Prescott Valley. In the last few years we have not been able to keep up with the demands in this area.

The property at 7325 North Coyote Springs Road was chosen as an expansion site due to its close proximity and the fact that other agricultural businesses were already operating in the area.

We wish to use this property for the production of the following items: annuals, perennials, vegetables, fruit trees, shade trees and ornamental and native shrubs and trees.

Drip irrigation will be the primary water delivery system. Water will be stored in an above ground storage tank to eliminate evaporation losses.

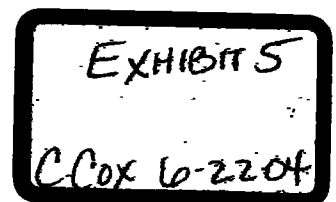
Plants will be distributed to the wholesale trade only. No public access will be allowed.

Sincerely,

Catherine Cox

Catherine Cox
Prescott Valley Growers

SC



1 11

SIGNATURE OF WITNESS PAGE

STATE OF ARIZONA : COUNTY OF YAVAPAI

I, CATHERINE COX, a witness in the above deposition,
do hereby certify that I have read the foregoing
deposition, and that the said deposition is a true and
correct record of my testimony, with such corrections
and changes, if necessary, listed below.

Catherine Cox

CATHERINE COX

(IF THERE ARE NO CHANGES, WRITE "NONE.")

PAGE	LINE	READS	CHANGE TO	REASON
58	19	Uncle Barry's	Eikleberry's	Misspelling
64	7	leaving out	leafing out	Misspelling
128	2	Mr. Firby	Mr. Furbee	Misspelled
128	4	high bred	hybrid	Misspelled

EXHIBIT 3

Form 1065

U.S. Return of Partnership Income

OMB No. 1545-0099

Department of the Treasury
Internal Revenue Service

For cal. year 2004, or tax year beg. , 2004, and end. , 20

See separate instructions.

2004

A Principal business activity
PLANT NURSERYB Principal product or service
PLANTSC Business code number
111400Use the
IRS
label.
Other-
wise,
print or
type.

Name, Number, street, room/suite no., City/Town, state, and ZIP code

PRESCOTT VALLEY GROWERS**12423 EAST DOUBLETREE RANCH ROAD
SCOTTSDALE AZ 85259**

D Employer identification no.

86-0708195

E Date business started

07/01/1991

F Total assets (see the instr.)

\$ **[REDACTED]**G Check applicable boxes: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change (5) ☐ Amended returnH Check accounting method: (1) ☐ Cash (2) ☒ Accrual (3) ☐ Other (specify) ▶I Number of Schedules K-1. Attach one for each person who was a partner at any time during the tax year ▶ **4**

Caution: Include only trade or business income and expenses on lines 1a through 22 below. See the instructions for more information.

Income	1a Gross receipts or sales	1a	[REDACTED]	1c	[REDACTED]
	b Less returns and allowances	1b	[REDACTED]		
	2 Cost of goods sold (Schedule A, line 8)			2	[REDACTED]
	3 Gross profit. Subtract line 2 from line 1c			3	[REDACTED]
	4 Ordinary income (loss) from other partnerships, estates, and trusts (attach schedule)			4	
	5 Net farm profit (loss) (attach Schedule F (Form 1040))			5	
	6 Net gain (loss) from Form 4797, Part II, line 17			6	
	7 Other income (loss) (attach schedule)			7	
8 Total income (loss). Combine lines 3 through 7			8	[REDACTED]	
Deductions (see instructions for limitations)	9 Salaries and wages (other than to partners) (less employment credits)			9	
	10 Guaranteed payments to partners			10	
	11 Repairs and maintenance			11	[REDACTED]
	12 Bad debts			12	
	13 Rent			13	[REDACTED]
	14 Taxes and licenses			14	[REDACTED]
	15 Interest			15	
	16a Depreciation (if required, attach Form 4562)	16a	[REDACTED]		
	b Less depreciation reported on Schedule A and elsewhere on return	16b	[REDACTED]	16c	[REDACTED]
	17 Depletion (Do not deduct oil and gas depletion.)			17	
	18 Retirement plans, etc.			18	
	19 Employee benefit programs			19	
	20 Other deductions (attach statement)			20	[REDACTED]
21 Total deductions. Add the amounts shown in the far right column for lines 9 through 20			21	[REDACTED]	
22 Ordinary business income (loss). Subtract line 21 from line 8			22	[REDACTED]	

Sign
Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than general partner or limited liability company member) is based on all information of which preparer has any knowledge.

Signature of general partner or limited liability co. member manager

Date

May the IRS discuss this return with
the preparer shown below
(see instructions)? ☐ Yes ☒ NoPaid
Preparer's
Use OnlyPreparer's
signature

Date

03/21/2005

Check if
self-employed ☒

Preparer's SSN or PTIN

137-52-3605

Firm's name (or
yours if self-
employed),
address, and
ZIP code**STEVEN STEIN CPA
1113 WEST MOHAWK LANE
PHOENIX AZ 85027**EIN ▶
Phone no.

86-0916255

623-582-2688

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Form 1065 (2004)

2004 ASSET DETAIL REPORT

Description	Date	Acqd	Cost	Bus. Use	Spec.	179+	Basis	Method	Rec. Per.	Cv	Prior Depr.	Current Depr.	AMT Depr.	Next Year	Gain/Loss	Sales Price	Exp Adj	Date Sold
Equipment	06/99		2600	100			2600	MACRS	5.0	HY	2451	149	2600					
GMC 2000	06/99		40000	100			40000	MACRS	5.0	HY	37696	2304	40000					
Shed, Pump, T	06/99		19000	100				MACRS	7.0	HY	19000		19000					
			-----				-----				-----		-----					
			61600				42600				59147	2453	61600					
In Service Year: 2000																		
Building	01/00		34978	100			34978	MACRS	39.0	MM	2691	897	3588	897				
Bobcat	12/00		17116	100				MACRS	7.0	HY	17116							
Truck	09/00		1500	100				MACRS	5.0	HY	1500							
Jack Hammer	03/00		1819	100			435	MACRS	7.0	HY	1683	39	301	39				
Well	10/00		18739	100			18739	FARM	15.0	HY	5762	1299	6827	1167				
			-----				-----				-----		-----					
			74152				54152				28752	2235	10716	2103				
In Service Year: 2001																		
Trencher	10/01		3141	100				FARM	7.0	HY	3141							
Greenhouse	08/01		2000	100			2000	FARM	10.0	HY	664	200	864	175				
Fence	07/01		4718	100				FARM	7.0	HY	4718							
Refrigerator	09/01		1073	100				FARM	7.0	HY	1073							
Building	01/01		14027	100			14027	FARM	39.0	MM	1537	480	1425	462				
Jack Hammer	03/01		800	100				FARM	7.0	HY	800							
			-----				-----				-----		-----					
			25759				16027				11933	680	2289	637				
In Service Year: 2002																		
Building	09/02		36283	100			36283	MACRS	39.0	MM	1201	930	2131	930				
Bobcat	02/02		37109	100			9176	MACRS	7.0	HY	31491	1605	9096	1146				
STATE INFO:			37109				13109	MACRS	7.0	HY	29083	2293		1637				

2004 ASSET DETAIL REPORT

Description	Date Acqd	Cost	Bus. Use	Bus. 179+ Spec.	Basis	Method	Rec. Per. Cv	Prior Depr.	Current Depr.	AMT Depr.	Next Year	Gain/Loss	Sales Price	Exp Adj	Date Sold
Truck	03/02	26287	100		18401	MACRS	5.0 HY	17454	3533	18401	2120				
STATE INFO:		26287			26287	MACRS	5.0 HY	13669	5047		3028				
Shed	07/02	1476	100		1033	MACRS	7.0 HY	844	181	1025	129				
STATE INFO:		1476			1476	MACRS	7.0 HY	572	258		184				
Well	07/02	12568	100		8798	MACRS	7.0 HY	7182	1539	8721	1099				
STATE INFO:		12568			12568	MACRS	7.0 HY	4874	2198		1570				
Water Tank	07/02	1487	100		1041	MACRS	7.0 HY	850	182	1032	130				
STATE INFO:		1487			1487	MACRS	7.0 HY	576	260		186				
Fence and Pi	07/02	28417	100		19892	MACRS	7.0 HY	16240	3479	19719	2485				
STATE INFO:		28417			28417	MACRS	7.0 HY	11020	4970		3549				
					-----			-----	-----	-----	-----				
		143627			94624			75262	11449	60125	8039				
In Service Year: 2003															
99 Ford truc	10/03	21500	100			MACRS	5.0 HY	21500							
89 Ford Truc	01/03	6400	100		4480	MACRS	5.0 HY	2816	1434	4250	860				
STATE INFO:		6400			6400	MACRS	5.0 HY	1280	2048		1229				
					-----			-----	-----	-----	-----				
		27900			4480			24316	1434	4250	860				
In Service Year: 2004															
Pump	06/04	20985	100	20985		MACRS	7.0 HY								
					-----			-----	-----	-----	-----				
Form Totals:		600708		20985	392862			428850	22565	299543	15320				

Set-Up Costs (#2)

Land Purchase	96,000.00
Road Improvement	11,061.00
Well	9864.93
Well Pump	8181.74
Pump Tech	6012.71
Storage Tank	7485.60
Paint Storage Tank	800.00
Pump House	14,000.00
Storage Building	1210.76
Carports Etc.	6759.41
Electric	3584.70
Electric Supplies	4276.37
Permits	1740.00
Mobile Home	49,368.00
VH Grading	7190.00
American Fence	9637.98
Nail Co (Culverts)	3638.70
Pipe	10,514.77
Irrigation Parts	31,961.36
Mile Hi Rock	45,510.26
Hanson	7283.93

Total	336,082.22
Perimeter Trees	11,000.00
(Cannot find this invoice)	347,082.22

Bobcat of Yavapai

Serving Central Arizona Since 1984

Sales • Service • Rental • Parts



bobcat

**HONDA**
Power
Equipment**8488 E. Long Mesa Dr.**
Prescott Valley, AZ 86314

Bill To:

P.V. Growers
Attn Jim

Ship To:

Mr Felt # 15
759-9672

PA 759-2701

Date:	Sales Rep	Quote	Retail Order	Job Request
	Tony		✓	

Qty	Description	Unit Pr	Total
1	883 Bobcat HAC loaded		31900
1	100' max Bucket m/cutting edge		1165
1	80" 1/2 Bucket		700
	Program Fee		500
	24 mo		

Subtotal	34,265.00
Tax	2,843.99
Bal Due	37,108.99

Customer Signature

Bobcat of Yavapai Signature

Phone: 520-759-9672

Fax: 520-759-9672

Down
Payment
\$7108.99



Loader Delivery Report

Bobcat Company
PO Box 128
Gwinner, North Dakota 58040

DEALER NUMBER and NAME

INVOICE

SERIAL NO.

MODEL

DM

Bobcat of Yavapai
6406 E Long mesa P.V. AZ 86341

52011245 883 8/6

ENGINE SERIAL NO.

CUSTOMER:

2. ☐ DEALER RENTAL
4. ☐ NAT. ACCT.
6. ☐ REGIONAL ACCT

1. ☒ PRIVATE OWNER
3. ☐ G.S.A.
5. ☐ OTHER
7. ☐ V-PROGRAM
8. ☐ MUNICIPALITIES

TRANSACTION:

2. ☐ FINANCED, B.F.S.
4. ☐ B.F.S. LEASE
6. ☐ LEASED OTHER

1. ☐ CASH SALE

3. ☐ RPO/RPT
5. ☐ FINANCED OTHER

PLEASE PRINT
CUSTOMER

P.V. Growers

CUSTOMER IS:

- ☐ First Time "SSL" Owner
☐ First Time "SSL" Owner Traded
☐ Other Equip
☐ Previous "SSL" Owner
☐ Replaced OR
☒ Added To
☒ Bobcat Models 753
☐ Traded ☐ No Trade
☐ Competition
Brand
☐ Traded ☐ No Trade
"SSL" - OF ANY MAKE

MAILING ADDRESS 6750 N Robert Rd

CITY Prescott Valley STATE AZ ZIP 86341 COUNTY Yavapai

COUNTRY US

MARKET A

APPLICATION 35

DELIVERY DATE 2/28/02
MO DA YR

CONTACT NAME

CONTACT PHONE

CONTACT E-MAIL ADDRESS

ADVANTAGE CLUB NO. 6014616461

NAME Tony Hillen

☐ ADD CUST NAME
TO WORKSAVER

WARNING

Never misuse the machine. Do not modify Guards, Seat Belt, Seat Bar or the Bobcat Interlock Control System (BICS). This can cause injury or death.

The following items are to be checked ☒ as they are explained or shown to the Owner/Operator by the Dealer at time of delivery:

1. Explain delivery packet (Operation and Maintenance Manual, Safety Manual and Warranty Brochure) when given to Owner/Operator.
2. Advise that dealer is the source for operator training, the Bobcat Skid Steer Loader Operator Training Course, and Service Safety Training Course review of job requirements and recommended loader and attachment usage.
3. Explain capabilities and restrictions of loader and attachments for job usage, as identified by Owner/Operator.
4. Review Safety Signs (Decals), Operation and Maintenance Manual and Safety Manual. Explain Operator's Handbook fastened to machine.
5. Show how to enter and exit loader safely, with lift arms down, brake set and engine off. Use hand grabs, bucket steps and safety tread.
6. Demonstrate use and maintenance of seat belt and seat bar. Explain availability of seat bar for previous models.
7. Explain function of seat bar control interlocks that require operator to lower seat bar.
8. Explain Bobcat Interlock Control System (BICS) with "Press to Operate" button. Explain by-pass for lift lock valve and traction lock override.

9. Demonstrate how to start, stop, turn and park the loader. Also show how to fill, carry and dump the bucket or use other attachments.
10. Explain use of operator cab which is a Rollover and Falling Object Protective Structure. Explain availability of ROPS for all previous models. DO NOT modify or remove operator cab.
11. Explain the use of the rear window opening of the loader as an emergency exit. DO NOT modify this opening or approve equipment which blocks this exit.
12. Explain availability of enclosures and Special Application Kits to restrict material from entering cab openings.
13. Advise availability of other accessories, such as: Lift Arm Support Device, Single Point Lift, Horn, Back-Up Alarm, Work Lights and Flashing Lights.
14. Explain that rated operating capacity of the loader and attachment is specified for safety and stability.
15. Explain the need & availability of bucket types and sizes for use with different materials. Explain availability of other attachments such as backhoes, breakers, grapples, rakes, etc.
16. Explain recommended fueling and lubricating procedure.
17. Advise never to use the loader in an environment with explosive dust or gases or with flammable material near exhaust.
18. Review maintenance procedure on Service Schedule decal and in Operation and Maintenance Manual. Explain use of lift arm support device.
19. Explain "Warranty Policy" and limitations to Owner/Operator. Warranty Statement printed in Operation and Maintenance Manual and Warranty Brochure enclosed in delivery packet.
20. Explain "Protection Plus" extended warranty program.

The above delivery information has been explained to me. I understand the operation and maintenance of this machine. I also acknowledge the warranty conditions and limitations as outlined in my copy of the warranty statement.

Owner/Operator Signature X

Date

Dealer Representative Signature X

Date

SECURITY AGREEMENT (Condition of Sale Contract)

This Security Agreement, made by and between the undersigned Buyer, having been quoted both a time sale price and cash sale price, and the Seller, and hereby purchasing from the undersigned Seller ("Seller") for the time sale price shown below, upon the terms and conditions set forth herein, and following description property therein, with all present and future attachments, accessories, replacement parts, repairs and maintenance, shall be as follows:

1 BOBCAT SKID STEER LOADER 883 SN 52011245
HVAC, ACB, 100 IN. 80 IN. CAB

ID# 200202210353201

This equipment will be used primarily for: ☒ business or commercial use other than farming operations; ☐ farming operations. When not in use, this equipment will be kept at: 5750 N ROBERT RD PRESCOTT VALLEY AZ 86314. When in use, will be used only in the following State(s):

INSURANCE COVERAGE

LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED IN THIS AGREEMENT

PHYSICAL DAMAGE INSURANCE COVERING THE COLLATERAL IS REQUIRED; however, Buyer has the option of furnishing the required insurance through an agent or broker of Buyer's choice.

☒ Buyer requests and authorizes Seller to obtain insurance coverage in the name of "All Risk" insurance (fire, extended coverage, theft and collision and certain exclusions from coverage) on the date of this Agreement, and for the duration of the term of this Agreement, and for the purpose of deductibles.

☒ Buyer has obtained the required coverages through:

Bob Cullison
(Name, Address and Address)

Best Deal 2716 E
99th 4420
Phone: 602 992 4420

Buyer hereby authorizes Seller and any assignee to report to any insurance company or insurer with Seller or any assignee information relating to the status of insurance which is provided or may be provided against physical damage to the equipment.

PROPERTY DAMAGE, if included, is not a factor in the approval of credit, is not required by the Seller and is for the term of the credit only.

☐ Buyer desires Credit Insurance: Premium \$ 0.00
(See above and in 4th - OTHER CHARGES)

Buyer hereby requests and authorizes Seller to obtain Credit Insurance in the name of Buyer, and for the term of the credit only.

☒ Buyer does not want Credit Insurance.

Buyer hereby requests and authorizes Seller to obtain Credit Insurance in the name of Buyer, and for the term of the credit only.

Description of Trade-In:

Gross Allowance

Less Amount Owning To:

Trade-In (Net Allowance)

1. CASH SALE PRICE

2. (a) Cash Down Payment

(b) Trade-In (See above)

(c) Net Rental Credit

TOTAL DOWN PAYMENT (a + b + c)

3. UNPAID BALANCE OF CASH

SALE PRICE (1 Minus 2)

4. OTHER CHARGES

(a) Physical Damage Insurance

(b) Credit Insurance

(c) Official Fees

(d) Other

(Describe)

TOTAL OTHER CHARGES (a + b + c + d)

5. PRINCIPAL BALANCE (3 + 4)

6. FINANCE CHARGE

7. UNPAID TIME BALANCE (5 + 6)

8. TIME SALE PRICE (1 + 4 + 7)

Buyer and Seller agree that the financed charge to be paid is \$ 0.00 based upon a 12 month year of 30 day interest.



Yavapai County Agricultural Guidelines

I. Eligibility

To be eligible for agricultural classification, property must meet specific criteria in the following areas:

- A. Use
- B. Expectation of Profit
- C. Functional Contribution

A. Use

1. The primary use of the land must be for agricultural purposes. Ownership alone does not qualify property for agricultural classification. The primary determinate is use.
2. The land must have been in active production for at least seven of the ten years prior to application.

There are seven conditions that may provide exception to the 7/10 rule. These are not hard and fast exceptions but will be reviewed on a case-by-case basis.

- a) Property out of production due to "acts of God" for not more than twelve months.
- b) Property participating in a federal program requiring acreage conservation.
- c) Property in a scheduled crop rotation plan.
- d) Property which is inactive due to temporary reduction or transfer of available water supply.
- e) Grazing land which is inactive or partially inactive due to reduced carrying capacity or generally accepted range management practices.
- f) Land to which a feedlot or dairy operation has been moved if it has been moved from a location which previously qualified.

- g) Property approved by the county assessor for unusual conditions. Department of Revenue must also approve.

B. Expectation of Profit

There must be a reasonable expectation of operating profit, exclusive of land cost, from the agricultural use of the property. The test of "reasonable expectation of operating profit" is whether a prudent rancher or farmer is managing or operating his unit similar to other experienced and successful ranchers or farmers and reasonably expects to make a profit in a reasonable period of time. There are eight relevant factors included in the test:

1. The manner in which the operator carries on the agricultural activity. The operator must:
 - a) operate in a businesslike manner
 - b) maintain complete books and records
 - c) manage substantially similar to other agricultural activities that are profitable
2. The expertise of the operator or his advisors. Expertise is demonstrated by:
 - a) extensive study of accepted business practices
 - b) consultation with experts
3. The time and effort expended by the operator in carrying on the agricultural activity. Evidence would be:
 - a) how much personal time and effort is devoted to agricultural activity
 - b) withdrawal from another occupation to devote time and energy to agricultural activity
 - c) the employment of competent and qualified persons
4. The success of the operator in carrying on other agricultural activities in the past.
5. The operator's history of income or losses with respect to the agricultural activity. Losses that may not be indicative:
 - a) initial or start up losses
 - b) sustained losses brought on by unforeseen or fortuitous circumstances such as drought, fire and weather. Income over a series of years would be indicative.

6. If operating profits are earned only occasionally, the amount of the profit, the relationship of profits to losses in both amount and frequency as well as the return on investments could indicate profit expectations.
7. The financial status of the operator. Substantial income from sources other than the agricultural activity may indicate that the activity is not engaged in with a reasonable expectation of profit.
8. Elements of personal pleasure or recreation. Agricultural property owned strictly for personal motives such as lifestyle or recreational opportunities would not be indicative of profit expectation.

C. Functional Contribution

Noncontiguous parcels must be managed or operated on a unitary basis and each parcel must make a positive economic contribution to the agricultural unit. Contribution may be through common management that allows more efficient use of labor, machinery or equipment. Noncontiguous parcels may also contribute by providing a water supply needed to supplement the primary agricultural property.

Noncontiguous parcels may be owned or leased by the operator. In general they must be fenced, have an independent water source and ingress and egress.

II. Qualification

Agricultural activity and size requirements:

A. Cropland

1. At least 20 acres
2. Land cultivated for crops that are harvested once a year such as cotton or with root systems that remain intact to produce another harvest like alfalfa.

B. Permanent Crops

1. 10 or more gross acres
2. Plants or trees which produce a crop and are perennial.

C. Grazing Land

1. Large uncultivated acreage utilizing natural forage.
2. Sufficient gross acreage to provide carrying capacity to support 40 animal units.
(See Additional Information Section V.)

D. High Density

1. No minimum acreage.
2. Intensive use through comparatively large amounts of labor or capital per unit of land.
(See Additional Information Section V.)

E. Processing of Cotton

1. No minimum acreage.
2. Land used for cotton ginnery is same as high density.

F. Processing of Grapes

1. No minimum acreage.
2. Further processing (after picking) of grapes is high density.
3. Since land use to grow grapes is permanent crop land, wineries may have several land values.

III. Filing Requirements

Agricultural Land Use Form (82916)

The owner or the owner's designated agent must file a completed agricultural use application before the property may be classified as agricultural. Note that the owner or owner's agent must file the application. The owner may or may not be the operator. The filing of the form does not alone grant agricultural status. The other requirements of eligibility and qualifications set forth earlier in these guidelines must also be met before agricultural status can be granted.

A. When to file an application

The agricultural use application form must be filed by a property owner or his agent (not the operator).

1. To apply for agricultural classification for the first time. This would include newly created parcels regardless of previous status on the parent parcel.
2. By the new owner within 60 days of a change in ownership.
3. Within 60 days of a change in use that results in all or part of the property not meeting qualifications for agricultural status.

B. What must be reported

1. Parcel number(s) and size.
2. Type of crops grown.
3. Number of acres leased and terms of the leases.
4. Affirmation that eligibility requirements have been met.
5. Number of animal units raised.

C. Penalties

1. The assessor shall not classify the property, on notice of valuation, as being used for agricultural purposes if the owner or agent does not file an application as prescribed above. (Note: the owner may subsequently appeal as prescribed in A.R.S. 42-221.)
2. Failure to notify the assessor within 60 days of a change in qualifications causes the property to immediately lose agricultural classification and be valued at non-agricultural full cash value. Owner is liable for additional tax plus a penalty.

D. Notification

1. The assessor must notify the owner of a property whether the assessor has approved or disapproved the agricultural classification of the property on or before the date on which the assessor next mails the owner the notice of valuation for the property. If the assessor disapproved the agricultural classification, the assessor shall notify the owner of the reason for disapproval.

Statement of Agricultural Land Lease (82917)

A.R.S 42-1615 requires that agricultural land owners, lessors, or agents acting on their behalf, provide the assessor with a written report of specific lease or rental conditions for any agreement lasting more than 90 days. The assessor is obligated to provide a copy of each land lease statement to the Department of Revenue.

A. When to file a statement

The owner/lessor shall file a separate statement for each lease within 3 months or by January 31, whichever is later:

1. A change in ownership or the lessee of the property or
2. A change in the lease terms and conditions as previously reported or
3. A change in the use of all or part of the property.

B. What must be reported

The written statement provided to the assessor must include the following information:

1. The name and address of the lessor and lessee.
2. The complete legal description of the property.
3. The situs address of the property.
4. The cash or cash equivalent of the lease payments.
5. The conditions of the lease, including the relationship of the parties.
6. The lessor expenses associated with the property, excluding land cost and interest paid, income tax depreciation, and capital improvements.

The Statement of Agricultural Land Lease (DOR form 82917) which is available from the assessor provides for those items mentioned above. The lease form also requires disclosure if the lessor is related to the lessee, (e.g.: spouse, family member, etc.). Additionally, various terms of the lease may be disclosed. Pertinent lease terms may include share crop, partial upkeep, maintenance, or the responsibility for making minor or major improvements. In some cases, the cost of making repairs and/or improvements may be attributed to or deducted from the rental payments.

IV. Valuation

A.R.S. 42-141(A) (5) specifies land classified as agricultural shall be valued by the income approach. The value is based on the average five year typical net rental income for comparable properties. Allowable expenses, including sales and property taxes, are deducted from gross rent to arrive at net cash rental.

V. Additional Information

Grazing Land

For property to be classified as grazing land or ranch property, its primary use must be livestock grazing on large uncultivated acreage utilizing natural forage. There are two major qualifications for grazing land. They are:

1. There must be sufficient gross acreage to provide a minimum carrying capacity of 40 animal units.
2. The property must be stocked with a sufficient number of animal units to make the operation economically feasible.

Helpful Definitions

Animal Unit - The unit of measure for livestock based upon the amount of forage required for one 1,000 pound mature cow, either dry or with calf up to six months of age, or their equivalent.

For example, the following measures are considered the equivalent of one animal unit:

- One mature beef animal of 1,000 pounds, or
- One and one-quarter horses,¹ or
- Five goats, or
- Five sheep

(Note: for weaned beef animals over six months of age but less than 1,000 pounds, the animal unit equivalent may be computed by using the ratio of average animal weight to 1,000 pounds. For example, a weaned calf of 600 pounds equals 0.6 animal unit.)

¹ Only working ranch horses can count as animal units. Pleasure horses, racing horses, breeding horses, boarded horses or any other horses kept for commercial purposes would not count as animal units.

Carrying Capacity - The measure of the capacity of grazing land to provide adequate forage to sustain livestock for a given time period. Carrying capacity is expressed in terms of animal units per section (640 acres) of grazing land per year. Carrying capacity varies depending on type and quality of forage available and water supply.

Carrying Capacity in Animal Units - While associated with the Department of Agricultural Economics at the University of Arizona, Mr. N. Gene Wright developed a map to exhibit study results of vegetation and grazing capacities. The Arizona Department of Revenue adopted the "Wright map" as a basis for the calculation of grazing land usage. This map was prepared primarily for determining the carrying capacity of land for cattle, but it may serve as a starting point for all livestock. There might be instances where land is more suitable for grazing livestock other than cattle, such as goats or sheep. In these instances, a separate determination of carrying capacity must be made. In all cases, "economic feasibility" must be considered, as well as carrying capacity.

The map shows the animal unit carrying capacity per section by township for Yavapai County. The township numbers are arranged vertically. The range numbers are arranged horizontally, with an east/west locator. The number in the table for each corresponding township and range is the animal unit carrying capacity per section for that area of grazing land as defined on the Wright map.

VI High Density Use

High density agricultural use is defined as intensive use of land for production of a high yield crop or commodity wherein comparatively large amounts of labor and capital are required per unit of land. There is no minimum acreage requirements for this classification. To qualify for valuation as high density agricultural land, the primary use of the land must be for production of a high yield agricultural crop or commodity. Examples are flowers, ornamental plants, rose bushes, trees (other than standing timbers) and greenhouses.

Land used for the purpose of raising and breeding animals, raising poultry, producing eggs, milk products or honey and similar agricultural activities may also qualify for designation as high density use agricultural land if it is intensively developed and meets the other statutory requirements. This would include the breeding of livestock that is other than part of a ranching operation. However, land primarily used for boarding of horses or other animals or breeding of animals for pet or recreation use shall be considered commercial property.

VII Personal Property

Beginning with the 1997 tax year, all persons owning taxable agricultural personal property must complete a personal property statement upon demand by the county assessor (form 82520A). The statement must be filed annually by May 1, or within 45 days of the date the assessor mails the statement. Personal property includes all farm and ranch machinery and equipment used in the production of crops, livestock and on-the-farm processing of feeds. Statements filed with the assessor must contain full and complete lists of property in the possession and control of the taxpayer.

Pre-printed forms sent by the assessor contain information based on prior year's reports in Section 3. The taxpayer should insure that the report is current and a complete list of all business personal property. Section 5 is used to report any acquisitions made in the prior year. Section M is used to report commercial livestock (such as show horses and race horses) and other animals that are not exempt.

For 1997, up to the first \$50,000 of full cash value of an owner's agricultural business property (Legal Class 4P) will be exempt from property tax. In order to claim the exemption, the owner or agent must sign the form in Section 7.

VIII Equine Operations

I. Eligibility

To be eligible for agricultural classification, property must meet specific criteria listed in this section. These operations are also required to meet the general guidelines, which cover all agricultural operations.

The operations approved will be placed under the High Density Classification.

A. Use

B. Expectation of Profit

C. Functional Contribution

A. Use

1. The types of equine operations which could be approved under the High Density Classification will be based on the following considerations:
 - a) Primary use of the land must be for production of a high yield commodity as defined by the Department of Revenue. It states: "Commodities are defined as agricultural products that can be transported and sold at market such as hay, grain, vegetables, cotton and livestock."
 - b) An intensive use of the land for production.
 - c) Generally the operation incurs a large amount of labor and capital required per unit of land.
 - d) The acreage requirements are reflective of the size of the operation, not to fall below one horse per a half acre.
2. The types of operations which do not qualify are as follows:
 - a) Property being used for commercial purposes such as:
 - i) For boarding of horses for other private or business entities.
 - ii) For use as a dude ranch, trail rides etc.
 - iii) For breeding and sale of commercial stock such as race, show or competitive horses.
 - b) Property being used for private or personal use of the property owner or associates.

3. Mixed Use

Many properties could fall into a combination of the approved and/or unapproved operations. When this occurs, the Assessor or Assessor's agent will determine the actual uses and the percentages of the approved and unapproved type of operations. If the percentage of approved property meets the requirements then the classification will be applied and valued appropriately. (See example at end of packet)

B. Expectation of Profit

1. Similar to ranching operations, the market will be controlled by the supply and demand of horses for ranches, racing, show and as a commodity.
2. Due to the market demands adjusting continually, the number of horses in each category should be supplied at the time of review by the Assessor's office.
3. New operations filing in the county need to report the number of horses in each category and supply an income and expense statement while the Assessor is considering the classification. The type of operation will dictate the number of years required for the review prior to the determination, but will not exceed seven years.

C. Functional Contribution

Equine operations do contribute to the overall agricultural community as long as they meet the definition found in this handout and the general guidelines.

Approval will be granted if the operation meets these guidelines and the general guidelines.

Mixed Use Example:

An equestrian operation has 50 acres. There is a 1 acre homesite, which the market supports a \$10,000/acre value: 20 acres are irrigated pastures, which is valued at \$432/acre: 1.5 acres are used for showing and boarding commercial stock and private horses, which is valued at \$15,000/acre; 1 acre has the barn, tackrooms and equipment, which is valued at \$432/acre; 5 acres are for the training and boarding of race horses, which is valued at \$15,000/acre; 18.5 acres is a turning out area for stock, which is valued at \$432/acre and 3 acres are used for trail rides.

Land Values

Homesite	1 acre	@	10,000	10,000
Commercial	9.5 acres	@	15,000	142,500
Agricultural	39.5 acres	@	432	17,064
	50.0 acres			169,564

Land Ratio is $02/10 + 19/25 + 79/16 = 17.59\%$